

TOWARDS FAIR AND FREE ELECTIONS

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223, Deen Dayal Upadhyaya Marg,
NEW DELHI-110001

Price : Rupees five only

Published by Shri Radhakrishna, Secretary, Lokniti Parishad, 223, Rouse Avenue, New Delhi-110001 and printed by A. K. Bose at Shanti Printers, H-57 Laxmi Nagar, Delhi-110051

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CHAPTER I

The National Malady

Democracy in an undeveloped and backward country with a vast and mostly illiterate population, innumerable diversities, and wide social and economic inequalities is indeed a rare phenomenon. And that it should have survived for 25 years, that have seen three wars; at least two disastrous famines; growing disparity between the rich and the poor; nearly half of the population living below the subsistence level: multiplicity of parties led by squabbling politicians, most of them concerned more with themselves than the country, galloping corruption, infecting all levels of politics and government; growing unemployment; utter confusion and lack of direction and purposefulness on the educational front, resulting in swelling at an alarming rate of the ranks of the miseducated idle youth; and other similar ills is nothing but a miracle.

Several explanations have been given for this miracle. There is no space to go into them here. My own explanation is three-fold. One is the fact that, by and large, India's freedom was won by peaceful methods of mass action devised by Gandhiji, which provided the readymade popular base that democracy needs. I have no doubt that had India wrested her freedom by violence, democracy, even if established in form, would have been only a facade for some kind of dictatorship.

The second explanation that occurs to me lies in the transformation, under Gandhiji's leadership, of the elitist Indian National Congress into a mass organization, with millions of members and branches spread over the entire country and penetrating deep into the countryside. At independence that provided a readymade mass party to operate the machinery of democracy. Furthermore, the way the Congress functioned in those days, from the lowest to the highest committee, was

in itself a training in democracy both for the people at large and for the thousands of political activists. I still recall many a lively and, at times, stormy debate in the A. I. C. C. during which we, the young Congress Socialists of those days, not only crossed swords with giants like the Sardar, but challenged fearlessly even the ideas and programmes of Gandhiji himself. Further still, the way Gandhiji treated us, his critics, was another unforgettable lesson in democracy, which requires that dissent be not only tolerated but also allowed full freedom and treated with respect.

My third explanation, which is perhaps the most important, is to be found in the standards of public conduct and the democratic values that had come to be established in the course of the national movement, from the time of Dadabhai Naoroji down to that of Mahatma Gandhi. It is fashionable these days to say that there is no place for morality in politics and that whatever helps to achieve the end is moral. But democracy, and still more so democratic socialism, cannot function properly except on the basis of certain commonly accepted values of life and of public conduct.

In all these three respects, also, there has been a steady deterioration in the last quarter century, putting into serious doubt the future of our democracy. The Congress ceased to be a movement soon after it came to power in 1947 (though Gandhiji, it may be recalled, had other ideas about it) and became a mere election machine. Even so, it retained to a considerable extent its democratic character, its mass organizational structure and inner vitality. All that has radically changed in the past two or three years. Paradoxical though it may sound, the Congress, despite its massive electoral victories of 1971 and 1972, is today a little more than a hollow shell. It has no inner strength and substance, and is presently kept going on huge doses of funds and the charisma of its leader. There is little or no internal democracy left in it, and its State leaders and Chief Ministers are mostly handpicked men, rather than leaders in their own right. In fact, a systematic effort has been made to cut the ground from under the feet of such national and State leaders as have a base of their own in

the party and among the people. Even when Mr. Nehru had a large majority in Parliament than his daughter has today, he did not have the power to lop off the tall poppies in the organization at will; he had to take recourse to such devious ways as the so-called Kamaraj Plan.

The drift of democratic centralism

The present state of affairs might suit Indiraji's style of leadership, but it spells ruin for the Congress as a democratic organization and *ipso facto* for Indian democracy itself. For, it is not reasonable to expect an organization that does not practise democracy in its internal affairs to be much concerned about preserving democracy in the affairs of the nation. The "democratic centralism"; a Russian euphemism for the dictatorship of the leader, towards which Indiraji's Congress seems to be consciously led, is bound, if left unchecked, to re-cast Indian democracy in its own mould.

This drive or drift—to me it appears to be the former—has two consequences: one for democracy and another for socialism. In regard to the first, the consequence is that dissent is no longer valued or welcomed. It needs to be emphasized here that dissent—in other words, freedom of thought—is not just an intellectual luxury, as our communist friends would like to make out, but a necessary catalytic agent to which society owes its progress, its revolutions, its technological and scientific advances. Without dissent society must become stagnant and moribund. But, unfortunately, in our intellectual world today, there is an insidious climate of fear spreading. All the universities and research institutions being dependent wholly or largely on government grants, teachers and researchers alike feel constrained in the pervading climate in expressing their views freely. The few that dare are made to suffer in one way or another. The conformers, on the other hand, can count on all the prizes there are. The situation was brilliantly summed up thus by a distinguished scholar in a private conversation: the intellectual has two choices before him today (a) if he wants to preserve his intellectual integrity he must go back to the old Brahmanic ideal of simple living, of which perhaps the last illustrious example was the late

Bharat Ratna Dr. Pandurang Vaman Kane, who did his monumental work on the Dharamashastras in a room 10ft. x 12 ft. in a Bombay chawl, and who, while Vice-Chancellor of the Bombay University, preferred to travel by tram to his office rather than use the car to which he was entitled; (b) if he wants to enjoy the modest comforts that the U.G.C. scales promise, he must be prepared, sooner or later to conform.

The situation in regard to the press is even worse. While there is no overt curtailment of the freedom of the press, the Government has many covert ways to discipline, if not editors of integrity, the proprietors and publishers. These ways are being increasingly used, and the result is writ large on the face of our daily and periodical press. How long will the brave exceptions survive depends upon what those who believe in freedom of the mind do. The cause is not quite lost yet. But it cannot be saved without a conscious, courageous and determined fight. Even a few free and valiant spirits, if they are vigilant and put up a united resistance, can save it and with it the cause of Indian democracy.

In regard to socialism, the consequence of the drive towards "democratic centralism", or personal leadership, at the cost of a healthy democratic socialist party, is that more and more economic power, in addition to the political power that it already enjoys, is passing into the hands of the affluent class of the so called "committed" bureaucratic elite, of which the "polit bureau" is naturally the Prime Minister's Secretariat. For propaganda purposes, we still hear noises about democratic socialism. But there is little in the present bureaucratic socialism that resembles democratic socialism, which requires decentralization, industrial democracy, education of the people particularly the elite, in the values of socialism and the need to practise them in their lives, and many other things. That obviously is a difficult path to follow, and it does not square with the Prime Minister's style of politics. The question is whether bureaucratic socialism can succeed. It seems to me that it cannot, unless its full logic is accepted: totalitarianism. Will this country allow that? Does the Prime Minister herself understand all its implications? Do her colleagues in the

Congress, except for the ex-card-holders and cryptos, understand them?

Turning finally to the democratic values and standards of public conduct evolved during the freedom movement, which according to me have helped greatly to sustain our democracy, the present situation appears utterly hopeless. No doubt, there has been a steady erosion of these values since independence, but latterly there has been a precipitous fall. All means now are right means as long as they help to achieve the end. There are no holds barred.

The consequences of cold Machiavellism for a backward society, lacking the infrastructure of democracy and the countervailing powers of a developed society, can only be disastrous for India's democracy. A case like that of Mr. Maulding's—no one can claim that British politics is any the less "modern" than India—is unthinkable in this country. Equally unthinkable are the kind of political and administrative exposures—think of Jack Anderson, for instance—that the Western press makes from time to time. Can any Indian pressman hope to get at the bottom of the Nagarwala case, for instance, and expose it in the press?

Survival of a nation without moral fibre

The way election funds have been collected in recent years, the huge election expenditures incurred, the large-scale impersonation, the "capturing" of polling booths—these and other similar practices threaten to reduce elections to a mere formality.

The galloping political corruption is affecting and degrading, because of the predominant position politics occupies in an undeveloped society, the entire gamut of national life: business, whether it is private or public; administration; the professions; education; even customs, manners and personal relations. Let alone democracy and socialism, the most important question is, can a nation without a moral fibre survive? It is not for the politicians alone to give the answer; it is for everyone of us.

A situation has arisen in the country in which, on the one hand, a myriad of problems clamour for solution and, on the other, a medley of policies contend for implementation. Except for the sycophants and apologists of the regime, impartial, highly competent observers and students of the national scene paint a uniformly dismal picture, with hardly any relieving feature. No doubt the pro-C.P.I., in other words, the pro-Soviet, press continues to blame everything on "right reaction" and "left adventurism", if not on the C.I.A. and such like, though lately it has begun to lash out at some of the closest colleagues of the Prime Minister in the Government and the Party. Indeed, the Prime Minister herself has not escaped their critical attention, if not attack, as recall, to mention only one instance, Shri Bhupesh Gupta's homily to her in the *New Age* to have sense enough to distinguish between the benevolent and malevolent superpowers. Apparently, all of Brezhnev's "tovarisching" and cooing to Comrade Nixon and the massive economic deals considered between them have failed to bring about even an elementary understanding of the new world that is emerging before everyone's eyes.

Lest I should be misunderstood, let me hasten to add that I was an enthusiastic supporter of the Indo-Soviet Treaty—as my press statement of the time will bear out—and, far from wanting to weaken it, would like to see it strengthened if possible. But I am also sensible to the fact that, in the first place, Russia is unable to meet our economic development needs; and, in the second place, an unaligned and a major regional power like India must diversify its economic and strategic dependence by forging and strengthening mutual ties with other nations and communities that may be in a position to help us meaningfully, such as the West European Economic Community, Japan and the U. S. A. I would also like to see our relations with China improve faster, if possible.

The Prime Minister, by the way, deserves to be warmly complimented for speaking up so forthrightly about the danger of the world's giants settling the fate of the rest of us. Happily, however, the fact of the West European Community, the emergence of Japan as an economic giant, and the quick

march forward of another Asian giant, China, as well as India's own growing strength, despite present difficulties, are likely to put off the Orwellian nightmare long enough to enable us and other nations to fashion not only their own future but also perhaps a better world in which neither armaments nor wealth nor size will be the arbiters of humanity's fate. However, I have digressed.

No cut and dried solutions

It will be presumptuous on my part to pretend that I have any cut and dried solutions for the baffling problems that beset us. Those problems themselves have been so ably discussed in the national press that it would be superfluous to deal with them here : I would only be adding to the pervading gloom. I should also note that quite a few competent writers have put forth constructive suggestions which deserve the attention of the authorities concerned. For my part, I would not have dared to launch upon this exercise but for the prompting of some friends. When a few months ago I had written on the future of democracy, which was published under different titles—"A Hopeless Situation" was one—it had attracted unexpected attention and, predictably, liberal abuse in the pro-C. P. I. press, particularly in the pseudo and more vulgar sections of it. Some people seem to be simple-minded enough to believe—they call it "tactic"—that by abusing and reviling anyone who criticizes the Prime Minister, they will be able to nestle closer to her and perchance draw her tighter into their net !

At that time some friends, who have great regard for the Prime Minister but who are also greatly worried over the deteriorating situation in the country, had suggested that having painted the negative or critical side, I should try to be positive and make constructive suggestions. It is largely in response to their wish that I am venturing to write this series of articles. I should have done this much earlier, but for the most shattering crisis of my life through which I have lived in the past few months and from which, I fear, I shall never recover. It is of some satisfaction to me, however, that

owing to the delay, these articles are appearing first in a journal* with which I happen to be so intimately connected.

I have entitled this series "First things First". There is so much wrong with our polity, economy and society in general that is really a bewildering question to decide where to begin, which problem to take first, where to apply the knife. The thought that has guided me in finding the answer is that one must go down to the *root*, the foundation, no matter how remote it might appear from the problems that are uppermost in the minds of the people—or for that matter, of the members of Parliament—whose solutions they rightly demand without delay. It may be possible, I am sure, to do something urgently to relieve the people's suffering, something about better availability of food, water and other essential articles of life ; something about the runaway prices. Perhaps the experts, backed by the necessary political will—a vain hope, one fears, unless the present school-boyish competition in slogan-mongering is replaced with hard-headed down-to-earth practical politics—could do a little to relieve the pressing distress. But that will not be a radical solution, and the problems will continue to beset us—even more fearfully, one suspects. It will be a case of *marz badhtaa gayaa jyon jyon dawa kee*.

Let radical cures be found

This is why I am pleading that we must go to the very roots. Let the palliatives be applied, but let the radical cure be found and unflinchingly administered. Here too the question of political will shall be decisive. But it is clear to me that indecision in this matter will spell eventual destruction of the country. I hate to believe that our political leaders, whether of the ruling or of the opposition parties, who in view of the deplorable apathy of the educated elite of the country, and the consequent absence of a strong and principled public opinion, the passivity of the masses and the aimless, often petty-minded, outbursts of the youth, happen to be in the position of the sole arbiters of our fate, will be so

* EVERYMAN'S, New Delhi

selfish, so short sighted, so lacking in patriotism and courage that they would rather let the country go down the cliff than rise to the occasion and put their shoulders together to save it from the threatening disaster. Parties, groups, even individuals that are stooges of one or the other super-power will, no doubt, do their best to take advantage of the chaos, in which the country may soon be plunged if the present drift continues, to establish themselves in power on behalf of their principals, be it in the name of "revolution" or in that of "saving" the country from being "taken over" by its "enemies" within and without. But surely the patriots whose loyalty, irrespective of political differences, is to this country and no other, far outnumber the open or secret stooges. It is to them that I am addressing these thoughts.

As I diagnose the root cause of the country's critical state of health, I identify it unhesitatingly as the precipitous fall in the moral standards of our public life. Not only has the fall been precipitous as compared, let us say, with only a decade ago, but there is also no sign of any slowing down of the process. There is no branch of public life—politics, government, business, education, trade unions, social work and the rest—that is left untouched. The difference is only one of degree, or one of opportunity. Not only the ruling Congress but also the Opposition parties are stricken with the disease, as the interregnum between 1967 and 1972 had sadly witnessed.

To some my diagnosis may appear too idealistic, too remote from the country's urgent maladies to be of any practical value. This exactly is the core of our national problem. We have become so cynical, so resigned, so reconciled to whatever may happen that nothing seems to outrage our conscience—barring honourable exceptions—or to stir us to action. Opposition leaders may, of course, shout and protest, try to exploit politically specific official lapses, call a *bandh* and even do worse such as committing arson and destroying national property. All that, however, has become a mere ritual which the common man has learnt to take in his stride. He somehow senses, no doubt partly from experience,

that his condition is likely to remain much the same even when the *bandh* leaders of today come to occupy the seats of power tomorrow. But what about that large body of our educated elite and our university youth (who unfortunately are wont to waste a lot their energies on trifling questions) who could take non-partisan and constructive action and give a lead to the people and help create a climate of public opinion which could be a deterrent to unethical conduct of politicians or businessmen or any other section or group whose action degrades national life and saps the foundation of our democracy ?

Democratic ethics

One can understand the apathy, or even opposition, to moral values in politics, or in other fields of national life, of those who are open enemies of democracy or of those who while wearing its mask really believe in one or another kind of dictatorship : limited (who is to set the limits ?) or unlimited, party or military or whatever. But in a country that only recently won its freedom chiefly through peaceful mass action or *satyagraha* and constructive work and where Mahatma Gandhi and other architects of its freedom like Nehru, Patel, Rajendra Prasad, Maulana Azad, Rajaji, and others are still remembered with reverence and gratefulness—is it possible to conceive that in such a country the true believers in democracy do not still far outnumber its open or secret enemies ? Parenthetically, the situation would surely have been different if India had won its independence through an armed struggle. If I am right in thinking thus, may I ask my democratic friends, irrespective of their party affiliations, whether democracy can function without a moral base ?

The subject of democratic ethics is fairly vast and political philosophers and scholars have written much about it. It is not my intention to enter into a philosophical discussion of the subject here. It will suffice to point out a few salient features with a practical bearing on our condition. As I understand it, the very foundation of democracy is belief in man—individual man—not as a means but as an end. It is

this faith in man, in his worth and dignity, in his rights and responsibilities, that distinguishes democracy from non-democracy. Quite a number of corollaries follow from this basic faith. One is that the citizen is entitled to be enlightened about public issues. This requires not only a free press and platform and other means of mass communication. It also means that he is told the truth, or is enabled to find out the truth, so that he can exercise his sovereign right of franchise intelligently. The voters, being the ultimate masters, the democratic ethic requires that elections are free and fair. That ethic also requires that those whom the voters put in positions of power serve them *honestly* and *selflessly*. Corruption, nepotism, fraud, lying are the enemies of democracy.

Sadly enough, whenever I have raised the question of ethics and politics with my Congress friends, I have been told that there was always corruption in the organization, that election funds were always raised in the same manner as to-day, be it by Sardar Patel or Shri S. K. Patil, that power was always concentrated in the hands of the Prime Minister, that there were always factions and in-fighting in the Congress, that the "High Command", had always had a hand in the selection of Chief Ministers, etc. etc. My reply has always been : (a) granting for argument's sake (though we might thereby be doing great injustice to the Sardar and Nehru and the others) that all that was true, did Indiraji have to split the Congress only to continue the old wrongs and immoral practices ? and (b) in politics, as in everything else in life, are there not limits beyond which it is fatal to go ? Body temperature beyond a certain degree would mean sure death, water heated beyond a certain point will no longer be water, food in moderate quantity will give health but consumed immoderately it is sure to lead to illness and worse. Quantity changing into quality is a philosophical observation not confined only to Marxian dialectics.

Crossing permissible limits

I know politics is not for saints. I am no saint myself presuming to preach a sermon to others. But politics, at least under a democracy, must know the limits which it may not

cross. Otherwise, if there is dishonesty, corruption, manipulation of the masses, naked struggle for personal power and personal gain, there can be no socialism, no welfarism, no government, no public order, no justice, no freedom, no national unity—in short, no nation. There would be utter chaos. I believe that the permissible limits have already been crossed in this country, for which everyone, including the elite, the opposition parties and even the common citizen, must take the responsibility. But in the nature of things the persons at the top of the power pyramid must take most of the responsibility.

The Prime Minister must have realized by now that power—even unchallenged power—is not enough; that personal popularity and charisma are not enough; that thumping electoral victories are not enough; that legislation is not enough; that *statization*, miscalled nationalization, of vital economic sectors is not enough: that plans are not enough: nor all of them put together are enough. For had it been so, the country's condition would not have been what it is today. If the Prime Minister has realized all this, she must have asked herself: what is wrong then, what is missing?

Direct experience of pervading corruption

I do not know what answer, if any, she has found, but my answer—offered in order to help and not to accuse or censure—is that the wrong lies in the *complete collapse of the moral authority of the country's political leadership*. The Prime Minister must be very ill-informed indeed if she does not know that the *common people*—I am not speaking of “right reactionaries” and “left adventurers”—have come to believe that most, if not all, ministers, including chief ministers; most of their representatives from Gram Panchayat presidents to Members of Parliament; most, if not all officers of the government, high or low, have become corrupt—the corruption taking varied forms. Ministers of the Union Government are not exempt from this common belief, even though the common man is quite distant from them. The Prime Minister's own image has become clouded, though even now the people seem to have more trust in her than in the others.

I am sure that this picture is exaggerated. Heaven knows there are still honest men and women among the ministers (including Chief Ministers), people's representatives and officers. But the masses have a sixth sense and their perception is largely true. Besides, they have enough direct experience of the pervading corruption to generalize from. They find that they can hardly transact any business in a government, quasi-government, or even a branch bank office without greasing some body's palm. Innumerable examples of this can be given. As far as the people are concerned, *bhrashtachar*, as Vinobaji has said, has become *shishtachar*. Apart from their own personal experience at the lower levels, the common man hears enough about high-ups, including those in Delhi, to form his own opinion.

In the minds of the urban intelligentsia—the unattached and non-partisan larger part of it—the picture is darker still. Is it any wonder then that the moral authority of the political leadership, including that of the Opposition, with rare exceptions, should have collapsed so completely?

The result of all this is a sort of paralysis in the administration as well as in the political arm of the government, namely, the party organization inclusive of leaders and workers alike. There are rare exceptions, of course, but they are too few to be effective. It is natural that in such a situation even the better-conceived policies and plans of government remain on paper or are distorted and used for the personal gain of politicians and officers and the better-off sections of the population. Even relief funds, grains and foods, including children's foods, have been so misused. All welfare schemes and "crash" employment and development programmes remain either unexecuted or mal-executed, leaving comparatively little of lasting value or use. The so called state "core" sector becomes a bottomless pit from which little is retrieved as compared with the vast amounts sunk in them. Land reforms and other similar reforms remain infructuous, and even land specially reserved for the landless is grabbed by powerful politicians and officers and their relatives. Controls fail and the black market flourishes. A parallel black money economy prospers

unchecked, on which the dishonest politician thrives and which provides the bulk of the sinews of elections, with the full knowledge and consent of the highest party leaders. Legislators defect and change parties, sometimes more than once, for a price: money or ministerial or an equivalent office. All-round indiscipline becomes the order of the day. The evils resulting from the moral collapse can be endlessly listed, but the above is illustrative enough. What is necessary is to find the remedy. Below are a few suggestions, for which I claim no originality, but which I believe will go a long way to bring the disease under control, if not cure it radically. It is reasonable to hold that once that is done, given the political will on the part of all the parties, the body politic can be restored to health, even if not to perfect health, which in life may rarely be possible.

In this connection, while I welcome the initiative of a group of M. Ps., calling themselves the Parliamentary Forum for Eradication of Corruption, and their admission that there is "all-round corruption" (*Hindustan Times*, August 10), I am certain that unless *competent and effective institutional procedures and authorities are established and their decisions are statutorily enforced*, the well-meaning efforts of groups and individuals—even mass demonstrations and sporadic indignant action by the youth and other concerned groups—will not be able to stem the tide.

CHAPTER II

The Remedies

Fortunately, several committees and commissions, including the Chief Election Commission, have studied this question in its various forms and made a number of valuable recommendations. But for some reason either no action has been taken on them or the action has been inexplicably too dilatory. Had this matter been dealt with the same expedition and determination with which the constitutional amendments were carried through, the situation might have improved considerably. My concrete proposals, based on previous recommendations, are as below :

First, I suggest that the decade-old Santhanam Committee's report be taken up more seriously. Some of its recommendations have been lukewarmly implemented, but its most important recommendation, to my mind, concerning the conduct of ministers has remained a dead letter. The Committee had recommended the creation of a Central Vigilance Commission which was to "be given by suitable legislation the powers that would be exercised by a Commission of Inquiry appointed under the Commission of Inquiry Act 1952, so that he (the Central Vigilance Commissioner) may undertake any inquiry relating to transactions in which public servants are suspected or alleged to have acted improperly or in a corrupt manner..." The present situation is that the Commissioner functions on an informal and insecure base by virtue of a mere executive order a government resolution dated February 11, 1964. It is desirable that the office should be given a statutory backing and statutory powers.

Further, while the recommendation in regard to public servants has been *imperfectly* implemented, the one in regard to ministers, as mentioned above, has been shelved. The result

has been a crop of inquiries set up mostly by political opponents in power, which have taken the aspect more of political vendetta than of serious judicial procedure, notwithstanding the impartiality of the enquiring judges. The Santhanam Committee recommended a much better procedure, namely that "specific allegation of corruption on the part of a Minister at the Centre or (in) a State should be promptly investigated by an agency whose findings will command respect. If a formal allegation is made by any 10 members of the Parliament or a legislature in writing addressed to the Prime Minister or Chief Minister, through the Speakers and Chairmen, the Prime Minister or Chief Minister should consider himself obliged; by convention, to refer the allegations for immediate investigations by a Committee..."

The Committee suggested by the Santhanam Report was to be drawn from a national panel constituted by the President on the advice of the Prime Minister.

My view is that instead of such a Committee we may have a proper Commission of Inquiry, but it is important that the institution of inquiries into specific charges of misconduct *should not be left to the sole discretion of the executive*. In this connection, the recent Tamil Nadu Public Men Inquiry Act, 1973 may be referred to and improved upon.

Lok Pal and Lok Ayukta

Second, the Administrative Reforms Committee had recommended in October 1966 the institution of the office of a Lok Pal at the Centre and of a Lok Ayukta in the States, with wide statutory powers. For reasons that are not clear, the Government of India took over 18 months to make up its mind : and it was only on the 9th May 1968 that the Lok Pal Bill was first introduced in Parliament. It was passed by the Lok Sabha in August 1969, but it made no further progress owing perhaps to the power struggle that was brewing within the Congress then and that burst out into the open in September 1969. After the Congress split, Indiraji was busy in consolidating her position, for which such spectacular steps were taken as statization of the major banks, abolition of the

Princes' privy purses, etc., but the Lok Pal Bill was not considered important enough to be dealt with the same expedition. It was only after Indiraji's great electoral victory in 1971 that the Lok Pal Bill was reintroduced in the new Parliament on 11th August 1971. Many spectacular Acts have been passed since the victory, such as the Constitutional Amendment Acts, but the Lok Pal Bill, in its own way more important than the others, have been languishing until today. This and the other delays and omissions pointed out below suggest a deplorable lack of any sense of urgency on the part of the Government of India in dealing with a cancerous disease not only of the body politic but of the nation as a whole.

As for the states, they seem to be even more leisurely in this matter than the Centre. Maharashtra was the first state, I believe, where the relevant statute was passed and a Lok Ayukta appointed with statutory powers. The Pande Ministry in Bihar appointed one of the senior-most I.C.S. officers of the State as Lok Ayukta, but I am not sure if the office has been created by statute and given statutory powers. The creation of such an office by a mere government order would be to repeat the sad experience of the Chief Vigilance Commissioner. Rajasthan and Madhya Pradesh are the other States where some steps have been taken in this direction, but no law has yet been passed.

However, let me not create the impression that the appointment of a Lok Pal and Lok Ayuktas will in itself cure the disease of corruption so rampant among ministers and civil servants. This is not the place to go into the question, but if the Lok Pal Bill and the Maharashtra Ayukta Act, which is claimed to be patterned after the former, were carefully scrutinized, it would be discovered that the action of these vital officers is severely limited and hemmed in by restrictive provisions. It is in many ways a case giving by one hand and taking away by the other.

Third, a fertile and well-known source of corruption at the state level, which embraces M.L.As, local party function-

aries and even ministers, is the matter of transfers, posting and promotions of subordinate and higher government servants of all departments. Not only is this a source of corruption, but it also occupies most of the time of the ministers. The remedy for this also is institutionalization of the system. It should be ruled and if necessary enforced by suitable law, that ministers would be concerned with transfers, postings, etc. of only IAS and other equivalent officers, and that the rest of the business should be dealt with by appropriate committees of departmental heads presided over by the Chief Secretary. Any *pairavi* or interference by M.L.As. or other partymen or even ministers should be held against the government servant concerned. The partymen concerned should also be given a warning by the leadership. I know that this is easier said than done, but if the party leadership is keen to fight down corruption and make its party a fit instrument of service to the people, the evil, I am sure could be reduced to a minimum.

The largest source of corruption

Collection of party funds, specially for elections, is perhaps the largest source of political and the other fields of corruption. One hears of fantastic amounts running into tens of crores collected by certain Ministers of the Union Cabinet and placed at the disposal of the Prime Minister. These amounts are not entered into the Congress party's open account books, nor are ever audited; no one knows, except for a very few, how much is collected, what part of it is pocketed by the Ministers concerned, nor how the moneys are spent. These funds are used mainly for Parliamentary and State elections, at which the dependable supporters of the leadership, particularly of those among it, whether at the Centre or in the States, who happen to have command over the vast funds, are specially favoured. These funds are also used for "managing" party members, buying up defectors, and toppling not only Opposition Ministers but also Congress Ministers in the course of party in fighting.

The way these funds are collected carry the corruption virus from the political into several other fields, such as

(a) business; encouraging dishonest practices, black money earnings and accumulations, compelling even honest business firms to turn dishonest by having to raise unaccounted funds for the ruling party through their dealers, agents, contractors, bogus souvenir advertisements, etc., (b) the bureaucracy; impairing vitally its authority, impartiality, dedication to duty and efficiency.

It is also this insatiable appetite of the ruling party for vast funds, which can come out only of black money, that is responsible, on the one hand, for the plethora of controls and other similar impediments to production, distribution and price regulation and, on the other, for their failure. The result is disastrous for the national economy.

I should add that while no party is above collecting its funds in black money, sometimes more by compulsion of circumstances than by choice, the ruling party alone is in the position to take the lion's share. The Opposition parties, even if they use cleaner methods, are reluctant to disclose the sources of their funds for fear that the ruling party will somehow wreak vengeance on their donors.

Vast sums spent over elections produce two serious consequences; (a) the voters themselves are corrupted and, what is more serious, disillusioned with the democratic process; (b) the Opposition parties, despairing of ever being able to match the unlimited funds of the Congress, are driven to the conclusion that the ruling party cannot be displaced through elections, and therefore they turn to protests, gheraos, *bandhs* and violence. Indian democracy, already under attack from so many sides, has a thin chance of survival under these conditions.

Effects on the National economy

It is a welcome sign that top Congress leaders are aware of this evil, Dr. Karan Singh is reported to have said at a meeting of the Parliamentary Forum for Eradication of Corruption that "elections were becoming so costly that they could be fought only with black money" (*Hindustan Times*, August 10, 1973). The *Commerce* (Bombay, July 21, 1973)

reports that Mr. C. Subramaniam "courageously confessed before the first convention of the National Students Union of India that black money and foreign money had poured into the coffers of all political parties to help them fight the elections. Every general election was becoming incredibly costly. Only a rich person or a powerful political party can finance the elections. In this situation, Mr. Subramaniam said every candidate started his election campaign with perjury and ended it with double accounts. He was of the view that the corrupt electoral system was the chief source of the instability of the political apparatus in the States. According to him, the political system was becoming more corrupt, immoral, most indisciplined and devoid of character. Mr. Subramaniam called upon the students to fight such corrupt parties. If a check was not placed on such wide-spread political immorality, the society was bound to meet with a disaster."

Mr. Subramaniam has used strong language, but his appeal to the students to check the evil only exposes his helplessness, which is not understandable. He should know that the students can do precious little in this matter. It is for Mr. Subramaniam, Dr. Karan Singh and other leaders who feel alike to take up this matter boldly in the Cabinet and the Congress Working Committee and if necessary stake their careers on this issue. The disease must be tackled at the source. In fact it is for the Prime Minister herself to make up her mind about it. She cannot be unaware of the devastating effect that this manner of raising funds is having on the moral position of the Congress party, on political morality in general as also on the bureaucracy, on private business, the electorate and on the nation as a whole. Indira ji is capable of extraordinary courage at times. And if she realizes *the emptiness of electoral victories and the evil of depending on black money*, she must put her foot down firmly and stop the practice forthwith, and then deal firmly with any one, no matter how high up, who disregards her decision. It would be far better for her and her party if she appealed to the people at large and asked her vast party organization to make mass collections. Business firms may also be asked to contribute, but only through cheques. A crore of rupees collected

in this manner would be worth more than a hundred crores of black money. The image of the Congress would improve and its socialist credentials, which are at a great discount now, will acquire some credibility. It will also tone up the bureaucracy and pave the way for dealing convincingly not only with the black money already accumulated but also with the continuous flow of black incomes.

The role of foreign money

Mr. Subramaniam has mentioned foreign money. There can be no doubt that the super powers, the U. S. A. and the U. S. S. R., who between them want to dominate the rest of the world, no matter how subtly and unobtrusively, must be spending millions of rupees in this country for all manner of purposes. The lesser powers like China and others must also be active in their own ways. Between the two super powers, the U.S.S.R. has the added advantage of having an ideology, which is still considered revolutionary by some people who have not grown up beyond the '30s, as well as that of a stable and dependable political base in the C.P.I. For some reason while Congressmen, including the Prime Minister and the Congress President, have talked often about the C.I.A., they do not mention the Russian K.G.B. I am sure the Indo-Soviet Treaty does not bar anyone, even the Government of India, from talking about it. Another, even more striking, fact is that Indian Intelligence, all branches of which are in the hands of the Prime Minister, has not been able to unearth the sources and recipients of foreign money and taken any steps to stop the mischief. At least nothing is made known to the public. In this situation I wonder what purpose all this talk about foreign money serves, except to malign certain Opposition parties without ever producing any proof. [Mr. Subramaniam, of course, did not malign any opposition party but put the blame on all parties]. If it is not in the public interest to take the public into confidence, it is better to keep quiet about it than to indulge in insinuations time and again.

Even if the Prime minister and the Congress High Command think it fit to heed my friendly advice, which I realize is expecting a lot, the question of the cost of elections will

still remain to be tackled seriously. For the past several years a number of eminent persons from President Rajendra Prasad downwards have spoken of the need to bring down election costs to reasonable levels, at least to the ceilings fixed by law, so that money does not play such a large, and at times decisive, part in determining the shape of our legislatures and governments. To this end a number of suggestions have also been put forward from time to time. The Chief Election Commissioner and the Joint Committee on Amendments to Election Law have also grappled, if I am not mistaken, with the question and made certain recommendations. One of the more radical suggestions made by some leaders, including Dr. Faridi of the Muslim Majlis, with which I myself have been in sympathy, is the adoption of the combined system, current in West Germany, of voting at the same time for individual candidates and for the political parties in the field. It has also been suggested that the Government itself, as in West Germany, the U. K. and some other countries, should meet a part of the candidates' election expenses on specified items.

Setting up a commission

In view of the importance of the question, particularly in the context of much talked-of socialist ideals, it seems to me that the Government should set up a Commission, including leaders of all parties recognized by the Chief Election Commission as national parties, as well as a few distinguished political scientists, with specialization in the field, and presided over by either the Chief Election Commissioner or a distinguished public leader, unattached to any party. The Commission should be asked to report in a year and try to reach a consensus among its members. Should the Commission's recommendations be based on a general consensus, the Government of India should accept and implement them in toto. In the absence of a consensus, the Government should formulate its own proposals based on the Commission's report and place them before Parliament for as speedy a disposal as possible.

Political defections as witnessed in the past few years, particularly since 1967, have been another great source of

political corruption. So much has been written on the subject that there is no need to dialate upon it here. I have only two observations to make. One concerns the delay, as in the other cases mentioned above, in implementing the recommendations of the Committee appointed by the Government pursuant to a resolution of the Lok Sabha dated December 8, 1967, "to consider the problem of legislators changing their allegiance from one party to another and the frequent crossing of the floor in all its aspects and make recommendations in this regard". Mr Y.B. Chavan, the then Home Minister, was its chairman and it was an all-party committee, Pandit Hridaya Nath Kunzru and myself being the only non-party members. after my sad experience about my report on the Welfare of Weaker Sections, which just got shelved somewhere in the Union Secretariat, I had decided not to serve on any Government Committee in the future. But when Mr. Chavan requested me to join the anti-defection committee, I gladly agreed because I was deeply worried about the ruinous effect of the new evil on our party system, the stability of governments, the character of the people's representatives and the quality and substance of our democracy.

Evil of Defections

It is true that the Committee's recommendations did not go far enough, yet I am sure if its moderate proposals had been accepted, it would have had quite a dampening effect on likely turncoats and the defection epidemic would have been considerably checked.

As for the Committee's recommendations not being radical enough, the fault lay mostly with the Congress itself and to some extent with such Opposition leaders as had somehow discerned at that time a process of what they termed "polarization" of politics in operation. The Lawyers' subcommittee set up by the Defection Committee had recommended a drastic remedy, namely that those defecting should lose their seats in the legislatures concerned and go back to constituents to seek a fresh vote. As the official records will show, Mr Rama Murthy of the C.P.I. (M) and I were the only members of the Committee who made similar suggestions, but the

Congress was not prepared to go so far. Had the Congress also supported our view, I have no doubt that several other parties would have fallen in line, and there would have been, if not general consensus, at least a large majority in its favour. The Congress took so conservative a line in fact that its representatives were not prepared to accept even the modest suggestion, which too had a large backing, for limiting the size of Ministries to 10 per cent of the membership of unicameral legislatures, and 11 per cent of the bicameral legislatures. Mr. Chavan's great difficulty then appeared to be that the Union Council of Ministers itself had more than 11 per cent of the combined strength of the Rajya Sabha and Lok Sabha. As for those who were dreaming of polarization of politics and were therefore anxious not to put impediments to the passage of legislators from one side to the other, I pleaded in vain that the process at work to my mind was not polarization, but just its opposite, namely fragmentation. Later events proved this diagnosis to be correct, which could have been checked to some extent even if the limited recommendations of the Chavan Committee had been implemented expeditiously.

In the event, the country witnessed the most shameful spectacle of political immorality and degradation. Party labels and ideologies lost all meaning and a brisk market flourished in which legislators were sold and bought as cattle. Money or ministership were the main baits and the highest bidder ultimately won. During the coalition government days in the States between 1967 and 1972, the Opposition parties, which were the ruling parties then, played the game with as much gusto as the Congress had ever displayed. After the Congress split in 1969 and the masterly strokes played by Indiraji, which put her on top and clearly foretold of a new high tide in her fortunes, the trend was reversed and all self-seekers, irrespective of party loyalties or ideologies, if any, rushed to get on her bandwagon. Money of course, was available for anyone, but ministries were limited. However, a safe seat in the legislature and promise of election expenses were more than enough for most of such politicians. After Indiraji's astounding victory in the Lok Sabha elections, there was a veritable stam-

pede, particularly in the unstable States, where only four years earlier the Congress sun (it was the undivided Congress then) had seemed to have set for ever, to get into the new Congress. No wonder the State elections of 1972 marked a remarkable comeback for the new Congress.

The harm done by these shoddy goings-on to political ethics, to the credibility of political parties and their slogans, the validity of the party system and most important, to Indian democracy itself was incalculable. Again, I cannot help feeling that if a law, or a constitutional amendment, if it was considered legally necessary, had been passed incorporating even the limited recommendations of the Chavan Committee, much of the political degradation could have been prevented. I also cannot help feeling that the new Congress, after the split, was anxious to reap the utmost benefit from political turn-coatism and, therefore, was in no hurry to put any obstacles in the way of defection. This was political polarization with a vengeance, but of a meaningless kind because it brought together many who were not motivated by political affinity but by naked self-interest.

Thus, it was only after the Congress had reaped a rich harvest that it thought it opportune to introduce the anti-defection Bill on May 16, 1973 in Lok Sabha, i.e., after over 4 years and 4 months of the Chavan Committee's report which was submitted on January 7, 1969.

Anti defection bill

However, belated as this Bill is, it is to be welcomed as a step in the right direction. I am very pleased that the Bill requires a defector to resign his seat in the legislature and seek a fresh mandate from his constituents. That is a great advance over the recommendation of the Chavan Committee. At the same time the Bill suffers from some serious defects owing to imprecise definition of defection in one respect, and an exaggerated and mischievous definition in another.

It seems that the Congress party has taken into account only its own experience and its own interests. According to

Clause (2) of the 32nd Constitution Amendment Bill, "A person shall be disqualified for continuing as a member of either House of Parliament—(A) If he, having been elected as such member, voluntarily gives up his membership of the political party by which he was set up as a candidate in such election or of which he became a member after such election." If the last words "such election" will mean in law an election in which he was set up by a political party, he should, of course, be disqualified to continue as a member ; if the words can also be construed to mean an election in which he stood as an independent candidate, his joining any party after the election cannot be considered an offence and no disqualification should apply to him. The Bill should take care to make this quite clear.

Clause (3) of the Bill states : "Notwithstanding anything in Clause (2), a member of either House of Parliament shall not be disqualified under sub-clause (A) of Clause (2) on the ground that he has voluntarily given up his membership of any political party if he has given up his membership of such political party by reason of a split therein". It is here that the definition of defection is imprecise and incomplete. The Congress party having itself gone through the experience of a split recently, that contingency is well taken into account. But what will happen (a) when two or more parties represented in the legislature merge together to form a new party with a new name, or (b) when one or more parties merge into an existing party, under whose name the merged party continues to function, or (c) when a party expels a member and he is admitted into another party ? All these contingencies are common in our political life and the Bill must take them into consideration.

But to my mind the most objectionable part of this Bill is Clause (2) (B), which states : "If he votes or abstains from voting in such House contrary to any direction issued by such political party or by any person or authority authorized by it in this behalf without obtaining prior permission of such party, person or authority."

Mere non-compliance with a party whip can never be considered to be political defection because such a member has neither changed sides nor crossed the floor ; he continues to remain a member of his party. A member of a legislature, under the party system, is certainly expected to be loyal to his party, but he has also other and higher loyalties, the highest being loyalty to his conscience. He has also a loyalty to his constituents, and to the nation and, if he is a person of a wider vision, also to the world community. Ordinarily, a member of a party is expected to follow the directions of the party, but at times he might find himself unable to do so on account of his other loyalties. Therefore, non-compliance with a party whip can never be considered sufficient for his being compelled to resign his seat. That will only establish party tyranny and mar the functioning of democracy. Disobedience of a party's directive is properly an internal matter of party discipline and should be considered as such. It has no place whatever in the Constitution of India.

Finally, it is not clear why the Bill adds a new provision to Article 103 of the Constitution, which reads : "Provided that the President shall not entertain any question as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in Clause (2) of Article 102 unless the question has been referred for his decisions by the political party or any person or authority authorized by it in this behalf." In the first place, it is not clear why Article 103 of the Constitution should require the President, in consultation with the Election Commission, to decide such a matter. One should have thought that it came within the jurisdiction of the courts. In the second place, it seems strange that unless a defector's party refers his case to the President, he should be safe from the consequences of his immoral political conduct. Except for these blemishes, some of them quite serious, I welcome this belated Bill and hope it will soon be made law, with its faults appropriately corrected.

Here, then, are some concrete suggestions, most of them not new for checking corruption and raising the level generally

of our political life. Several of these are already in various stages of implementation. I have suggested some improvements and stressed the harm done by delays already incurred and the need in the future to deal with them with the utmost expedition.

In conclusion, let me emphasize for all I am worth that remedies—and others that may be thought of—would be of little avail *if the will to reform were wanting in the political (including the Opposition) and bureaucratic elite of the country.* Let every citizen, who realizes the paramount importance of a moral regeneration of our politics, lend a helping hand in whatever way possible to this process. Only then will he earn the right, and be able to find the way, to take the initiative in his own hands and act massively to undo the present mischief and usher in a new era of moral and material revolution. I for once cannot see the way yet because I have not done enough myself in this direction, and also because I have still hope that our leaders, whether of the Left, Right or Centre, will correct themselves.

CHAPTER III

Appeal to MPs

Dear Friends,

I am venturing to address you on two questions that I consider to be of the greatest importance, particularly at this stage of our political, economic and social development.

The first question relates to:

- (a) the fundamental rights to freedom of the citizen,
- (b) The independence of the judiciary.

The second question relates to : political and administrative corruption.

Circulated along with this letter is a pamphlet in two parts, each dealing with one of these questions more fully than it has been done in this letter.

In the first part¹ you will find a reprint of my press statement on both (a) and (b), the Prime Minister's reply. The second part² summarises my three recent articles titled 'First Things First', published in EVERYMAN'S. Briefly, my argument as well as suggestions are as below:

In regard to Fundamental Rights to Freedom, if my understanding of the majority judgment of the Supreme Court is right, the Parliament has the power to *abrogate any or all* of the fundamental rights whenever it considers it necessary, and not only "impose reasonable restrictions" on their exercise "in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order or morality".....etc. as detailed in Article 19 of the Constitution.

1. Reproduced in this chapter.

2. See chapter II

The fact that the fundamental rights to freedom as described in the Constitution include also the rights to property has led to much confusion and placed even such inalienable rights of the citizen as the rights (a) "to freedom of speech and expression", (b) "to assemble peaceably and without arms", (c) "to form associations or unions", (d) "to move freely throughout the territory of India", etc., at the mercy of Parliament.

I have pleaded in the pamphlet that no parliament should be vested with such sweeping powers, because every majority party or coalition of parties in parliament may not exercise the expected self-restraint in regard to the above-mentioned inalienable freedoms of the citizen, thus endangering the foundations of democracy and opening the door to dictatorship of one kind or another. The assurances of the Prime Minister and her government are no constitutional guarantee against their breach by future parliaments. Even today there are some influential elements in the ruling party who do not have a firm commitment to democracy and who have been advocating a "limited dictatorship" despite the Prime Minister's strong disapproval. It would be unwise to discount the possibility, no matter how remote it may appear today, of such an opinion gaining a majority in Parliament. The advocates of dictatorship then will be able to use the Constitution to destroy the Constitution. Democracy will have been used once again in history as an instrument to murder democracy.

It is to prevent such a tragic eventuality, insofar as it may be possible to do so constitutionally (for no Constitution can be a guarantee against its unconstitutional subversion) that I have suggested that Parliament should *forego* its power to abrogate the citizen's fundamental freedoms, and that guarantee to that effect should be written into the Constitution. Some may raise here the question of Parliament's sovereignty, but the Supreme Court itself, while upholding its sovereignty, has held that Parliament cannot alter the *basic structure* of the Constitution. In other words, Parliament's sovereignty is to be exercised within the *basic framework* of

the Constitution. All that I am advocating is that since the principle of limitation of Parliament's sovereignty is implicit in the Constitution, Parliament should accept an additional limitation in order to save democracy from its present and future enemies, barring it from abrogating the citizen's fundamental freedoms (leaving out, as I have proposed, the freedom "to acquire, hold and dispose of property") and confining its power to imposition of "reasonable restrictions" as set forth in Article 19.

As all political parties in Parliament have pledged their support to the above fundamental freedoms, and as there is thus a national consensus on the subject, there should be no difficulty whatever in suitably amending the Constitution to this effect.

As far independence of the judiciary, there has been a steady deterioration in this respect in the past few years. Some statements made from time to time, by the Prime Minister and leaders of the ruling, as also of some opposition parties, calling for "committed" judges or judges pledged to the social philosophy of the Government of the party in power, have created an atmosphere of intimidation and subjectivity in which judges, particularly the timid and unduly ambitious, find it difficult to remain and exercise their independence.

Then, the practice of employing retired judges in various lucrative jobs at the disposal of the government has also worked to erode their impartiality and independence. The suggestion to stop this practice and relieve the economic anxieties of retired judges by raising their pension to amounts equivalent to their emoluments at retirement has not found favour so far with the powers that be. The question of cost raised in this connection is misconceived, because the extra cost involved will be a small price for securing the independent character of our courts of justice.

The procedure for appointment of judges and chief judges of the High Court is a matter of grave concern to the people because they want to see justice unaffected by ex-

ecutive or any other influence. Over the past some years a steady inroad has been made by the executive, both at the State and Union levels, into the judicial sphere, particularly into that of appointment of judges. The latest example of this was the supercession of three senior judges of the Supreme Court and appointment of the Chief Justice of India by the Prime Minister without there being any constitutional or conventional procedure to be gone through. This is clearly against the spirit of the Constitution, and as I have said in part I (b) of the enclosed pamphlet: "If the appointment of the Chief Justice of India remains entirely in the hand of the Prime Minister of India.....then the highest judicial institution of this country can not but become a creature of the government of the day."

It would be presumptuous on my part to suggest any particular procedure for the appointment of judges. But, as all political parties and overwhelming public opinion are in favour of independence of the judiciary, and there is thus a national consensus on the subject, I have suggested that a Parliamentary Committee should be appointed to examine this *entire* question—not merely the appointment of the Chief Justice of India—consult public opinion, the opinion of the Bar and of constitutional experts and others concerned, and make considered recommendations to the Government of India, which when adopted by Parliament, should be made a part of the country's basic law through suitable amendments to the Constitution. As the ruling party commands an overwhelming majority in Parliament, and as the suggestion does not advocate or favour any particular procedure but leaves the decision to Parliament, thus upholding its sovereignty. I see no reason why the Union Government should have any hesitation in accepting the suggestion made herein and explained further in the accompanying pamphlet.

Lastly about Political and Administrative Corruption: All political parties seem to be agreed that corruption anywhere, but particularly, in the political and administrative sphere, is like poison to the country, and it must be severely

curbed, if not eradicated completely. The only difference between them is about the degree of corruption and the sphere of its prevalence. The ruling party naturally holds that the scale of corruption is exaggerated; and it further believes that the opposition parties and businessmen are more to blame for it than itself. On the other hand, the opposition parties and public opinion, generally, hold the Congress to be the fountain-head of corruption. But apart from this understandable difference, they are all agreed about the danger that corruption and its unchecked growth hold for the nation. As for the general public, being the direct victims of the disease, they have been crying loud and long for an urgent relief.

Thus, this third issue on which I am addressing you is also one about which there happens to be a national consensus. Yet, the wonder is that neither the party in power nor those in opposition seems to be seriously trying to bring this rampant disease under control. The opposition parties no doubt declaim loudly against corruption, holds demonstrations and call *bandhs*, but these devices, conceived as they are in a partisan spirit, hardly lead to any constructive action.

Corruption being all-pervasive, one feels bewildered as to where should begin its cure. But, as politics and government occupy a dominant position in a backward society like ours, it should be obvious that any serious attempt to tackle the disease must begin with politics and administration.

Happily, this subject of political administrative corruption has been engaging the attention of individual leaders as well as governments almost from the morrow of independence. Gandhi himself has made several painful references to it in his post-prayer talks and in the Harijan. Some other leaders have also spoken strongly about it. At the same time bodies like the Santhanam Committee, the Administrative Reforms Commission, the Anti-Defection Committee, the Chief Election Commission, etc., have probed into its various aspects and made many practical suggestions. Yet, strangely enough, their recommendations have received so far rather perfunctory treatment from the Central and State Gove-

rnments, with the result that the disease has been growing at a cancerous pace and shows no signs of abating.

My object in addressing you here is to draw your serious attention to this dangerous situation and to beg you, in all humility, not to allow further time to be lost in tackling it. In the present circumstances it is clear that only the ruling party is in a position to take effective action, but the Opposition too can play an important role. So my plea is to both sides of the Houses of Parliament. I have already written to the Prime Minister about it, and placed before her the same practical suggestions as are given in the accompanying pamphlet.

If YOU, the Representatives of the people, do not bestir yourselves now and take urgent steps in this matter, you will not only be betraying the people's trust, but will also be proving that all your talk of socialism, democracy, removal of poverty, etc. is a sham and an insult to the common people. Please also remember that it will only be after you have begun seriously to tackle political and administrative corruption that you will be in a position to tackle the evil in other spheres.

I have ventured to set forth later in this Chapter a few practical suggestions for your consideration. I claim no originality for them, because most are based on previous recommendations of various bodies that have studied different aspects of the problem. I have added one or two suggestions of my own.

Here then, my friends, are the three vital issues to which I am venturing to draw your attention. As I have emphasised, there is a natural agreement in regard to the urgent need for appropriate action in regard to them. Where possible, I have made practical suggestions. But there may be other and better suggestions. That is for you and Parliament to decide. My only plea to you is to give your active and urgent attention to the issue raised herein. These are national and not partisan issues, so if you all approach them constructively, there is no reason why the ruling and opposition parties

should not be able to reach a workable agreement. One step forward in the right direction is worth much more than permanent stalemate in a tug-of-war between ideals.

The Congress being in an overwhelming majority in Parliament, it may be tempted to impose its own solution, suitable to its partisan, rather than national interests. I hope it will be far-sighted enough to resist that temptation, and try to reach the largest possible measure of agreement with the Opposition. My plea to the opposition parties is also to put their partisan interests aside and approach this task with the national interests alone in their minds.

May goodwill and good sense prevail !

Yours sincerely,

15 December, 1973.

Jayaprakash Narayan

Enclosure :—

(1) The Citizens' Fundamental Rights To Freedom

So much has been said and written about the recent judgement of the Supreme Court and appointment of the new Chief Justice, that there was no need for me to add to the cacophony. But as an old freedom-fighter, who even after Independence has tried to serve his country and his people to the best of his ability, I have been so deeply distressed and worried by the recent happenings, that I cannot restrain myself from sharing my anxieties with my countrymen, and particularly with fellow freedom-fighters especially those of the ruling party.

Like millions of those who had fought and suffered for the country's freedom I too had a golden vision of independent India. Today when I compare the reality with that vision I am filled with sadness. And when I ponder over the future that the recent events portend, my heart sinks. I cannot believe that it can be otherwise with my fellow freedom-fighters.

It is in this belief that I am venturing to write these lines. This is not meant to be a polemical or critical piece, but is an

earnest appeal to the Prime Minister and those Congressmen who have publicly expressed faith in democracy and socialism.

In the recent past whenever I happened to have expressed dissent or critical judgements, I have been roundly denounced as anti-Indiraji, a spokesman of right reaction and worse. Generally speaking, my detractors have been from the same quarters as have made it their business for the past several decades not to miss an opportunity to attacks and revile me.

Lately, these quarters have behaved as if they alone are the true friends and supporters of the Prime Minister and enjoy her confidence. The result is that what is said gets lost in the din of declamation, rather than being dispassionately considered.

I, therefore, wish to make it clear, though I regret that it should at all have been necessary to do so, that I have no reason to be anti-Indiraji. On the contrary, I have every reason to wish her well and see her march from success to success.

Whatever I have said in the past and may say now and in the future was, and will be, motivated by my concern for the country and its future. The school in which I have grown up has taught me not to let personal affection and regard stand in the way of performance of duty. My professional detractors will no doubt brush this all aside. But I do hope that the Prime Minister and those Congressmen to whom these words are addressed will give some thought to this appeal.

My appeal is on two counts : (i) the fundamental rights of the citizen; and (ii) the independence of the judiciary. It appears from the analysis made by knowledgeable persons that a majority of the judges of the Supreme Court has ruled that the citizens' fundamental rights and freedom, as laid down in the constitution, can be not only amended but also abrogated by Parliament.

The Constitution unfortunately lumps together rights to property with such fundamental rights as those of freedom of

speech and expression, freedom of association and movement etc. The so-called confrontation between the executive and the judiciary that has taken place so far has in each case been concerned with rights to property.

Property is a social institution and in a democracy it must serve the social good as conceived of by the prescribed democratic will of the people and realised in a democratic manner. As such, private ownership of property of certain kinds can be limited, regulated, even extinguished, if necessary.

But in a democracy, while the fundamental rights to freedom may be abridged and regulated, they cannot be abrogated though they may be suspended for temporary periods of national emergency, war, and in such other circumstances as are listed in the Constitution.

If those Congressmen who are committed to democracy are sincere in their faith and are vigilant enough, it is their duty to ensure that the present or future Parliament does not take advantage of the Supreme Court's judgement to extinguish the fundamental freedom of the citizen. No doubt the Prime Minister and other spokesmen of her party have from time to time assured the people that they have no idea whatever to do this. But mere assurances are no safeguard against the misuse of power. It is necessary the assurance is written into the Constitution in such form as may be appropriate.

Some Congressmen may plead that their parallel commitment to socialism is as important as their commitment to democracy, and, therefore, it may become necessary sometimes to deprive the people of their fundamental freedoms of speech, expression, association and movement etc., in order to establish socialism. I hope that on second thoughts, such friends will realise the fallacy, nay, the mischief of this argument. This is a slippery path and will end up not in democratic socialism but in dictatorial communism.

The repeatedly proclaimed aim of the democratic socialists has been to establish socialism by democratic means. But if establishment of socialism necessitates the abrogation of the people's fundamental freedom, what remains of demo-

cratic means? It should be realised that the extinction of these rights might lead to the extinction of free platform and press, of Opposition parties, of all trade unions, except the official ones, of all such institutions and organisations as do not agree with the ruling party.

I am not suggesting that there is an immediate danger of all this happening. I am merely pointing out the logic of unlimited power. Therefore, my earnest appeal to the Prime Minister and her democratic socialist colleagues is to rise above partisan considerations. Look into the future and assure the present and coming generations that their liberties would remain intact, their miseries would be brought to an end and that they would be enabled to live in a free, just and equal society.

(2) Independence of the Judiciary

As for the second part of my appeal, I take my stand on the principle that the Congress and its critics are agreed upon, namely, the principle of the independence of the judiciary. There is clearly a national consensus on this question. That being so, I ask the Prime Minister and her colleagues if the manner of appointing a new Chief Justice of the Supreme Court upholds this universally accepted principle.

I do not think any fair-minded person will agree that it does. Parenthetically, it is necessary to emphasise that nothing said here casts any reflection whatever on the integrity and ability of the present Chief Justice. What is being discussed is not any personality, but a principle and its faithful implementation.

I am sorry to say that all that has been said by the Prime Minister and her colleagues to justify their action is utterly unconvincing. Much of it is also misleading. Competent writers have argued all this out in the Press.

I am not competent to suggest what procedure should be followed. The Constitution itself lays down a procedure, namely, the same as in the case of the other judges of the court. There was also a convention which had been followed

for the past 25 years. The Law Commission had recommended a procedure. The Government claims to have followed that, but it has done so only partially, disregarding other essential criteria laid down. I am sure other suitable procedure can be devised.

The simple fact is that if the appointment of the Chief Justice of India remains entirely in the hands of the Prime Minister of India, as has been the case in the present instance, then the highest judicial institution of this country cannot but become a creature of the Government of the day.

Therefore, my appeal to the Prime Minister is that she should appoint a parliamentary committee, representative of all the parties in Parliament, to go into this vital question and make recommendations to Parliament. The committee naturally should have power to consult public opinion, including the opinion of the Bar and of eminent jurists. The procedure evolved and recommended should also apply *mutatis mutandis* to the High Courts.

In sum, unless constitutional safeguards are provided to restrain Parliament from abrogating the fundamental freedoms of the citizen except suspending them for temporary periods and in clearly specified circumstances, and unless the independence of the judiciary is credibly assured, the very foundations of our democracy will be in danger of being totally destroyed.

CHAPTER IV

Correspondence with the Prime Minister

Dear Jayaprakashji,

I have your letter of May 16. I saw your statement in the newspapers when it was released to the press. Now that you have taken the trouble of sending it to me, I presume a few comments from me would be in order and might even be expected.

It is gracious of you to assure me that you are not against me personally. It has been a privilege to have had your friendship over the years, whatever our political differences. Dissent is indispensable to democracy. Equally indispensable is a readiness to shoulder responsibilities in order to fulfil the dreams of a people.

You have said that your early visions have remained unfulfilled. This has been true of all battles, all quests. But the duty of working for the vision continues. It is the function of our political system and of all organs of Government—the legislature, the executive and the judiciary—to work for the vision.

You have drawn some dismal conclusion from the recent appointment of the Chief Justice. May I submit to you that these conclusions are unwarranted? There is no question here of the executive subordinating the judiciary. Some time ago there was a fear of a head-on-collision between the legislature and the judiciary. Many in the legal profession declared that Parliament would tend to be irresponsible unless it was restrained by the judiciary. Even at the time I pointed out that the theory that the judiciary alone was the custodian of the Constitution was erroneous. Fortunately by the Court itself has changed its stand on this question with the repudiation of the Golak Nath judgement.

The experience of other nations with an independent judiciary also proves that although the judiciary is generally on the side of the **status quo**, it does respond to changed social needs. A famous instance of change is the attitude of the American court. Once it had upheld slavery and racial discrimination but later disowned them and walked in step with the more liberal urges of society. The various pronouncements regarding property by our own court have been so confusing that many people, who do not believe that property is a sacrosanct fundamental right, would wish our judiciary to take a more modern view of the matter.

Frequent reversals of stand, not always in a more liberal, more human direction, were the main difficulty with our judicial decisions in the last decade or so. There was obvious need for greater continuity of ideas and vision. The seniority principle had led to an unduly high turnover of chief justices. I take it that no one maintains that the rule of law is safeguarded only by the principle of seniority. In the appointment of a new Chief Justice, we have only freed ourselves of a convention which had the sanction neither of the Constitution nor of rationality. It would be atrocious to think that the independence of the judiciary is thereby affected. The outcry and controversy which have attended the appointment seem to me to be wholly misplaced.

You have spoken about the competing rights of democracy and socialism. It has been our endeavour throughout our struggle for freedom and during these 25 years as an independent nation to reconcile the two. I am perhaps more confident than you that we can achieve this reconciliation. Democracy, independence of the judiciary and fundamental rights are not in danger. They would be threatened if we were to allow our faith to be eclipsed by defeatism and if we help alliances of the extreme right and left.

Yours sincerely,

New Delhi,
9th June 1973

Sd/- Indira Gandhi

Dear Indiraji,

I thank you for taking the trouble of replying to my statement on fundamental rights and the appointment of the Chief Justice of India.

I have no desire to enter into an argument with you. Indeed, the several points you have raised in your letter have all been very competently discussed in the press by some of the best constitutional lawyers and writers in the country. Important party leaders have also dealt with them in Parliament and outside.

However, as far as my statement is concerned, the points raised in your letter have little relevance. I have not said anything against change, nor have I pleaded for the rights to property, because I do not consider these to be fundamental in the same sense as the rights to freedom of expression and association. In fact, I would be happy if property rights were separated from fundamental rights, though the values and norms of democracy would still require that the powers of the Executives to interfere with property, even in the public interest, be appropriately regulated by law.

Nor, again, have I upheld any convention, either that of seniority or any other, including the one recommended by the Law Commission. My plea is a very simple one : there being a national consensus—with the Government, the Opposition and public opinion agreeing—that the independence of the judiciary must be preserved, it is necessary to provide in the Constitution appropriate procedures to secure that objective. In respect to the appointment of the Chief Justice of the Supreme Court, which is only a part of the question of independence of the judiciary, the present position is that the Prime Minister (acting, of course, through the President) is completely free to appoint any one he or she may wish. Even the President of the U. S. A., who in certain respects is more powerful, constitutionally, than the Prime Minister of India, does not enjoy such unlimited power in this respect. It is curious that in appointing judges of the Supreme Court the Constitution should require the President, i. e., the

Prime Minister, to follow a certain procedure of consultation, but that he should have untrammelled authority in appointing the Chief Justice. It should be obvious that as long as the seniority convention lasted, no question of procedure arose.

The simple fact is, as I have said in my statement, that if the appointment of the Chief Justice of India remains entirely in the hands of the Prime Minister of India, as has been the case in the present instance, then the highest judicial institution of this country cannot but become a creature of the Government of the day.

I cannot conceive of any person, committed to democracy, disagreeing with this simple proposition. It is not a question of doubting your or any one else's good faith. No individual or party can remain in power for all times. When we make laws, more so, the fundamental law of the land, we have to think not of ourselves but of generations to come.

Coming to your remarks about what I have said in my statement about the competing rights of democracy and socialism, I would again submit that "we" should cease to think in terms of "ourselves" being in power for ever. You say that "It has been our endeavour throughout our struggle for freedom and during these 25 years as an independent nation to reconcile the two. I am perhaps more confident than you that we can achieve this reconciliation."

Suppose I grant you that, what guarantee is there that another government with other ideas of democracy and socialism will also be able to reconcile the two.

Here also my plea is quite simple. The Supreme Court has decided that parliament has powers even to *abrogate* the fundamental rights, including the rights to freedom of expression, association, movement, etc. My plea is that Parliament must agree to provide for constitutional constraints upon its own power, so as to prevent another Parliament in the future, whose commitment to democracy may not be particularly strong and whose concept of socialism may be very different from that of the present Government, from

extinguishing the fundamental freedoms of the citizen and establishing a dictatorship. The argument that no constitution can stand in the way of the people's will, which more often than not means the will of a minority of determined and ruthless political manipulators usually backed by the force of arms, betrays defeatism and confusion of thought on the part of those arguing in this manner, or it heralds the infiltration of trojan horses into the ranks of democratic socialists.

It was in view of these considerations that I had appealed to you as Prime Minister to appoint a Parliamentary Committee to go into these questions and report to Parliament, which might enact the necessary laws and constitutional amendments.

My statement was "an earnest appeal" to you, and if your letter is your considered response to that appeal, I can only confess to a sense of utter disappointment and deep distress. Is it a vain hope that you may still be persuaded to give further thought to this vital and far-reaching question?

With warm regards and best wishes,

Yours sincerely

Patna, June 27, 1973

Sd/- Jayaprakash Narayan

CHAPTER V

Black Money & Electoral Reform

There may be different opinions on management of the economy and on political issues between the ruling and Opposition parties, but there seems to be a near-consensus about the need to bring about electoral reforms. All parties and many non-partisan groups are working on this problem. Eminent persons in public life as well as intellectuals have spoken about it. The Government has announced its desire to have discussions with the Opposition parties on this subject. Discussions are going on within the Congress Parliamentary Party itself on the various aspects of the problem.

Why is there such a spurt of interest on this subject and a massive demand to bring about changes in the election processes? Dr Rajendra Prasad in his valedictory address to Members of Parliament in 1962 had warned against the dangers of the increasing use of money power in elections. Since then the menace has grown. Nobody gave serious thought to the menace till it became a threat to the very existence of the political system. Slowly the perception of this threat is growing not only among the economic and political elite but also among the electorate.

Democratic Right

The voters see the electoral system, which is supposed to confer on them the democratic right to participate in the functioning of the system, fast losing its credibility and legitimacy. Instead of giving them control over the political and economic instruments of the nation, the system is functioning in the interest of top 15 per cent of the population which includes industrial labour. The political and economic

by Shri Krishnakant M.P.

elite has in turn become a prisoner of the process of the electoral system and it finds itself incapable of managing effectively the polity and the economy. A sense of frustration and helplessness is all pervasive in spite of brave words.

To study the problem scientifically, it would be pertinent to start from the election process itself. The elections were not as costly in 1952 as they have become today. Besides the higher value of the rupee all round the political parties had field cadres and organisational net-works and this in turn meant less expenditure to canvass for an election. That was an era when the ideals of service and sacrifice were very much in the air. Political leaders and workers did not expect much in return for their work in the elections. Many workers considered it unethical to work with a desire for reward and return. After a period of 10 years the organisational structure of political parties began to crumble excepting those of cadre parties. With the growing alienation of political parties from the people, the elections became more and more expensive. Altogether a new machinery had to be organised for every election.

Costly Conveyance

To understand the present situation, a look at some of the items of expenditure would be useful. With a million population and half a million voters in a parliamentary constituency, a letter to each voter costing 25 paise each would cost Rs. 1.25 lakhs. In Haryana, there are nine Assembly constituencies in one Lok Sabha constituency. If two jeeps are used for every Assembly constituency, 18 jeeps would be required for one Lok Sabha seat to reach the people. A jeep runs 16 to 18 miles per gallon, that is Re 1 per mile. Assuming that it covers 100 miles per day, it would cost Rs. 100/- per day. So it costs Rs. 200 per jeep for a 30 day campaign, which would cost Rs. 6,000 per jeep. For 18 jeeps it would amount to Rs. 108,000.

There are 500 to 700 polling booths in a Lok Sabha constituency. Assuming an expenditure of Rs. 100 per booth for shamiana, durries, stationery, etc. it would cost between

Rs. 50,000 and Rs. 70,000. We should add to this the expenditure on public meetings, offices, workers, etc. It is estimated by some seasoned partymen with experience in managing elections that it costs Re 1 per voter that is Rs. 5 lakhs for one Lok Sabha seat. As a conservative estimate, we may put it at Rs 3 lakhs to 4 lakhs. This is the cumulative cost whether incurred by the candidate, party or the supporters spread all over the constituency. If there are two to four effective candidates on an average, it would mean an expenditure of Rs. 12 lakhs per constituency.

For 540 Lok Sabha constituencies the total expenditure on candidates and political parties would be about Rs. 65 crores. Because of more intensive campaigning for the Assembly elections, a conservative calculation can be double the Lok Sabha cost, that is Rs. 135 crores. The total of both comes to about Rs. 200 crores.

These calculations do not include the cost of municipal and other local bodies (panchayat/zila parishad) elections. Recently for a panchayat election in Punjab in a village Rs. 2 lakhs were spent. No element of bribe or corruption is involved. These are merely legitimate items of expenditure to reach the voter and carry the message of a party or an individual candidate to all parts of the constituency.

This money comes from the economy from various levels of business and industry (big, medium and small). As it is not accounted for anywhere, it is mostly black money. This black money includes foreign money which, it has been established, comes into the country through various means. These fund raisings obviously lead to link-ups between politicians and black money operators and smugglers. The administrative and law enforcement machinery automatically gets involved and has to be controlled and manipulated to give protection to the financiers of the different political parties.

Basic Defects

Finances are needed for working legitimately the election process. But the interlinkage between the black money

and the election finances leads one to doubt whether there is not something basically wrong in our election system and taxation laws if they contribute to the growth and development of black money and black politics.

It is estimated that two-thirds of the transactions taking place in the economy have an element of black money. All the black money transactions get respectability and protection because of the need for money to run the electoral and political systems. With so much money out of bounds for legitimate governmental activities and the planning process there cannot be any realistic planning in the country, no effective control over production and distribution, industry and agriculture. Nor can there be any control over prices for the common man. Under reporting, tax evasion and deliberate misapplication of scarce resources become the normal means for generating unaccounted money for elections and political activities.

It is not that politics and elections have always been run with black money. It has slowly but steadily infiltrated into it and now seems to be about to overwhelm it. Black money did not originate in politics but is taking it over. Therefore, the attack on black money has to start from an attack on its use in politics.

This is also necessary to wield effectively the political and administrative instruments, to remedy the maladies in the economy and in planning which have become all pervasive due to the existence of a parallel black economy. Vested interests flourish in abuse of licences and permits, under-reporting and tax evasion, etc., and buy immunity from the law by handing over black money to politicians. Hence the greatest need today is to reform the electoral system as a prelude to reforming the political and economic system.

The ban on company donations was imposed to break the nexus between the political parties, business and industry. The hope was that parties would collect funds from the masses and not from private industry and trade. The hope has not been realised. On the contrary, the nexus

has gone underground and nobody knows what amount any business house or individual is giving to the different political parties, or individual politicians and what new relationships are being built in a surreptitious manner. One also does not know how much money is really being passed on to political parties and how much is being retained by intermediaries. This has led to various types of corrupt practices in commerce and industry.

Vested Interest

In order to retrieve the situation to some extent, the ban on company donations to political parties may be lifted. The companies should, however, be required to make donations to political parties and not to individuals in political parties. Routing through individuals tends to bossism at various levels in all political parties. Proposals for donations should be brought up at the annual general meetings of companies. This will give a voice to shareholders in financing different parties.

Mere lifting of the ban on company donations will not however bring out into open all the contributions to the political parties or any private transactions that political bosses may have with business and trade. Even when there was no ban on company donations, black money used to flow into the coffers of political parties leading to the rise of bosses who used to be in charge of these collections. With the current ban on company donations and the need for money for elections having increased, the collection of black money has been systematised and it flows in continuously and effortlessly into the coffers of various parties.

Black money donors prefer to oblige individuals in different parties in order to develop a hold on the political and administrative apparatus. A vested interest has been, therefore, developed in black money financing among the monopoly capitalists, large and medium industrialists and big landowners. In order to give an incentive to open donations, income tax exemptions may have to be given for donating to political parties recognised by the Election Commission.

There are some who are critical of the proposal on the plea that there will be an overflow of contributions to the political parties and this may have an adverse impact on tax collections. Discussions with experts in the field show that even if there is some marginal reduction in tax collection initially, ultimately it will bring in more taxes. Even now no taxes are collected on black money. The whole idea is to bring economic operations into the open. Even with this incentive, black money donations will continue to be offered and received. But it will certainly reduce the percentage of such donations.

Shocking Start

It is well recognised that most of the election returns filed by candidates are false. Expenses are much more than the ceilings fixed. It is a shocking commentary on our electoral system that most of the members of the Legislature or of Parliament have to begin their parliamentary life after signing a false statement on oath. It reduces the credibility of the members and the system.

I, therefore, propose that there should be no ceiling on election expenses because no member should be made to compromise with the truth and start his legislative life with a conscience conditioned to electoral expediencies. The greatest need today is to find out the real political, social and economic costs to the system arising out of the election processes. So election returns without ceilings should be filed and a candidate who does not include any item of expenditure would be penalised.

The argument that a ceiling on expenditure encourages the candidate to spend less is not borne out by experience of last 22 years. Moreover, the new clarifications given to the recent Ordinance about Parliament's intentions not to include party expenditure in the election expenses of candidates make the ceiling redundant.

The plea that with a higher ceiling only rich persons will be able to stand for elections is not tenable either. No election can be fought with a candidate's own resources if

he happens to be from the lower or middle class. Elections at any level are no poor man's game—nor even panchayat elections or university elections. Elections in this country have converted our political system to a rule by a moneyed oligarchy. Hence the artificial ceiling imposed must go and at least for the next 10 to 15 years no ceiling should be imposed so that we shall know the real cost of elections to the system.

All receipts and expenditures of political parties should be annually audited and submitted for open public screening. Receipts should be tallied with company and individual donations from the latter's tax returns. All parties and alert individuals would keep a vigilant eye on the expenditure of the parties. For this purpose the annual accounts of the parties should be required to be published. The income-tax law should provide that any donations to parties by individuals or companies will no longer be secret under the Act.

Past Experience

The suggestion about lifting the ban on company donations and income-tax exemptions to political parties may be criticised on the plea that all major contributions will go to the ruling party. This was not past experience. Big donations had gone to parties aligned with big business. These measures will have a salutary effect. If donations are shown in the annual party accounts, the public will see and judge which party is aligned with big business and obligated to it. A party getting support from big monopoly houses cannot easily claim to be fighting for the poor and for socialism. Surely, there cannot be much distance between the party's avowed policy programmes and the sources of party finances. If there is, the concerned party will lose its credibility. Just as the founding fathers of the Indian Constitution made a built-in provision for adult suffrage so that all political parties have to go to the people, in the same way this provision will force the political parties to go to the masses for party funds. Otherwise, they will expose their real conduct. This will also prevent the inflow of foreign money.

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Once the basis for financial support is changed the economic, social and political policies of the parties and their implementation will have to undergo a change. This will enlarge the base of the political system and the political parties. Gandhiji had laid great stress on the collection of the poor man's pice. That will give greater credibility and make the political leadership think of the poor man. This will in turn force political parties to become mass-based rather than money-based which has been the direction in which the political parties have moved during the last 27 years. Any non-inclusion of receipts and expenditure should entail severe penalties to both the individual donors as well as party officials involved. A minimum irreducible penalty of seven years' imprisonment should be prescribed.

It is generally believed that a campaign period of three to four weeks is necessary for political education before the elections. The fact is, nobody reads election manifestos or political programmes, however much the newspapers may analyse them. What all the political parties do is to manipulate the electorate by casteism, communalism, factionalism and promises of local benefits by hectic campaigning based on comparative money power of the candidates and the parties. That is why political parties become inactive after the elections and go to sleep till the next election comes. The result is that there are generally no party offices in the rural areas and where there are offices at the district or taluk levels they remain locked most of the time without workers at various levels.

Political parties have begun to believe more in manipulation of the electorate during one or two months before the elections than in regular party work. This had led to a situation in which the system functions solely in the interests of the top 15 per cent of society which includes industrial labour. These are the politically active elements. This in turn alienates the parties from the masses. The poverty line of 40 per cent in 1964-65 is believed to have moved up to 66 per cent today according to some experts. For this situa-

tion not only the ruling party but all the political parties. have contributed in fullest measure.

Time Limit

The whole election process, from nomination to polling, should be completed in one week. During this period no canvassing should be allowed. Non-canvassing is quite in the Indian tradition. Canvassing was considered unworthy and beneath one's dignity in the AICC election during the freedom struggle. If the voters know and respect the person and the party they will vote accordingly.

For the seven days of campaigning no vehicle should be allowed to move for election purposes excepting those permitted, and on the last day all vehicles should be off the road to avoid their use for carrying voters. No public meetings should be allowed for one month preceding the date of polling. If canvassing is allowed during the last week, the candidates and parties with larger resources will be able to manipulate the voters and claim to spend large sums of money. The prohibition of canvassing is to ensure that such an alibi is not put forward.

During this period, radio and TV time should be allotted to political parties free of charge. Posters giving the names and symbols of candidates and parties should be printed by the Government and pasted in all villages and cities. The Government may also bear the expenses of all legitimate items of poll expenditure identified by the Joint Parliamentary Committee on election law.

Continuous Work

This will force the political parties and the candidates to work continuously, all the time, if they are to contest elections. They will have to open offices at the village and district level and build up a cadre of workers with a programme to be carried out continuously for the whole period. Only parties and candidates who nurse constituencies will survive in politics. In the present system, with the possibility of manipulation of the electorate in the last one or two months,

there is no attempt on the part of political parties to politicise the rural areas and to have constructive programmes. An entire reliance today is on money power and appeals to casteism, communalism and factionalism. Money collectors dominate the political organisations instead of genuine political workers or dedicated cadres. This in turn leads to the growth of private armies of goondas and the dominance of anti-social elements in the political scene. There are signs that if the present trends are unchecked, we may land ourselves into an era of unrestrained political violence.

With the population doubling by the end of the century, the number of voters will be more than double in each constituency. The cost of elections will be enormous. In some South American states, black money operators and smugglers finance the elections form or topple governments and are in continuous association with multinational corporations and external agencies. In this situation the talk of left and right is meaningless. The CIA claims to have penetrated 47 out of 81 Communist parties in the world. Thus right reaction may very well push itself/forward under a left label.

President Roosevelt was faced with a similar situation in regard to black money in the US. In the twenties and early thirties a significant black money economy developed on the basis of boot-leg liquor, which was sold in the speakeasies. This, in turn led to protection rackets, vice rings, private armies, etc., and organised criminal organisations like the Mafia were able to infiltrate into political parties. Links were established between black money operators and sections of political parties such as Tammany Hall (the political machine of the Democratic Party in New York). Soon local administrations, the police, and even trade unions came under their influence. Bosses emerged in various cities and states and were manipulated by the Mafia and black money operators like the notorious Chicago gangster, AL Capone. Roosevelt abolished prohibition, cleansed politics with radical New Deal policies, purged some of his lieutenants, and got rid of the bosses.

Chiang Kai-shekh's regime in China, Batista's in Cuba crumbled under the weight of corruption of their supporters.

The Weimar Republic in Germany was brought down by inflation and corruption and monopoly capitalists made it possible for Hitler to come to power. Black money proved the undoing of Nkrumah's Ghana and Soekarno's Indonesia. In all cases it led to the weakening of the governments and its fall ultimately.

People's Discontent

In our own country, the people's discontent, inflation, and the non-availability of essential goods have led to rapid erosion of the credibility of the parliamentary system. It is of the utmost importance that the link between black money and the electoral system is snapped. The manner in which the electoral system has worked has a direct impact on the working of the political structure and plan performance. The failure of planning, land reform, the wheat take over, bank nationalisation, etc. are wholly attributable to the nexus between black money, the political structure, and the administration, and their continuous interaction. Lenin said where corruption begins, politics ends; and where there is bribery there is no politics. According to Lenin, politics is concentrated economics. There can be no socialism unless the electoral system is people-based instead of being money-based.

Two views are possible. One is to attempt to reform the system and eliminate the stranglehold of black money. The other is to encourage black money politics in the hope that it will bring the crisis of the system nearer and lead to its collapse so that a socialist system can be erected in its place. Some leftist elements in this country appear to adopt the second view. As Nehru pointed out in his article "Basic Approach" (1958), such a course of action may lead to the collapse of the system and the emergence of a Fascist dictatorship as it did in Germany in 1933. Recently our Prime Minister too warned of the possibility of a violent class conflict.

Suggestions have been made for a Government subsidy to political parties for meeting election expenditure on the

West German model. In West Germany this subsidy accounts for only 20 per cent of the expenditure of political parties. The rest of the money is collected from the party members, business and industry. In France and other countries where such items as postage and the printing of a certain number of posters and circulars are paid for by the State, the total expenditure of the parties or candidates has not been reduced. Now they spend more on other items like meetings, TV and radio, etc. The problem in India is to build a system where expenditure is reduced to the minimum. The State may allot radio and TV time to the parties, and print posters, etc. for elections.

There is one significant advantage in a Government's subsidy on the basis of votes polled by the political parties. This will provide nucleus funds for party expenditure. The parties will not have to depend on donations from private sources for essential nucleus expenditure. I am not, therefore, against the State providing part of the expenditure of parties; but my main emphasis is on the reduction of election expenses and bringing the entire expenditure into the open.

Money will certainly be required by political parties for continuous work envisaged in the proposed system in the period between elections. No businessman or industrialist is going to pay regularly huge amounts for party work. Only real sympathisers of different parties and their programmes will come forward to finance such party work. Party cadres will have to collect funds from the people on the basis of their performance and work. Further, such politicisation will not be possible unless at levels below the State legislature (zila parishads, panchayat samitis, and panchayats) active democratic structures, with adequate economic and social programmes for them to handle, are created. If this is done, a whole corpus of political cadres, active in political work, will be created and they will have a stake in continuous political work in the rural areas. Only such cadres will be able to bring about land reform, wheat procurement and distribution, extend adult literacy, intensify the family

planning campaign, and attack such anti-social practices as untouchability. The failure to tackle these problems is mostly due to a bureaucratic approach, the fear of politicising the countryside, and the hold of vested interests on the political system. If we are to succeed in economic planning and progress towards socialism, we should start with the reformation of our electoral and political system.

CHAPTER VI

Attitudes to Corruption

With the constitution recently of a non-official judicial commission headed by the former Chief Justice of India, Mr. K. Subba Rao, to investigate charges of corruption and misdemeanor against Mr. Bansilal, Chief Minister of Haryana and Mr. L. N. Mishra, Union Railway Minister, a new attitude to the question of probity in public life has emerged. It is the first time since independence that such a non-official body presided over by a person of Mr. Subba Rao's judicial stature has been charged with probing allegations against such important public figures. The sponsor of the enquiry Citizens for Democracy, founded by Mr. Jayaprakash Narayan, is a non governmental and non-party agency.

A non-official judicial commission is, no doubt, a contradiction in terms because it has no legal locus standi, cannot summon witnesses or call for documents ; in short, it has none of the power and prestige which the Commission of Inquiry Act confers on bodies with a similar purpose. For all one knows, Mr. Bansilal and Mr. Mishra will treat it with the contempt which they think it deserves.

But non-official enquiry commissions are not mere creatures of Mr. Jayaprakash Narayan's "counter-revolutionary" outlook and "anti-national" attitude, to borrow two of the epithets which the Prime Minister uses to describe the Sarvodaya leader's activities. They have a place in the tradition of our freedom struggle. After the Jallianwalabagh massacre, for instance, the Congress had set up an enquiry commission with none other than Jawaharlal Nehru at its head. And its findings were not mere grist to anti-British propaganda. They have a place in history.

By G. S. Bhargava

Political Motives

Mention has been made earlier of a new attitude to charges of corruption. The allusion is to that of the Government as well as of the public. Even conceding that the enquiry is politically motivated—which is perhaps unavoidable when the accused, as in these cases, are practising politicians and the charges have a direct bearing on contemporary politics—the setting up of the Subba Rao Commission represents the determination of the sponsors not to wait indefinitely for the Government to respond to their demand for an enquiry but to force the issue.

Similarly, the Prime Minister and the leaders of the ruling Congress party ignored—again, obviously, for political reasons—a demand by more than a dozen Haryana legislators and over 120 members of Parliament for a judicial enquiry into charges they had levelled against Mr. Bansilal. Instead, a panel of Ministers belonging to the ruling party cleared him.

In the case of Mr. Mishra, apart from innumerable allegations made against him from time to time by members of Parliament (and denied by him), he also figures in a report of a judicial Commission comprising Mr. Jivan Lal Kapur, a retired judge of the Supreme Court, which enquired into the affairs of the Bharat Sevak Samaj. The Commission submitted its report in July 1973 but partly because of its voluminous nature—it runs into about 13,000 pages in 25 volumes—the contents are not easily available to the public.

Chagla Inquiry

Secondly, the terms of reference of the Kapur Commission being limited to unearthing financial and administrative irregularities in the working of the Bharat Sevak Samaj and its handling of construction works like the Kosi project in Bihar, the findings are more in the nature of establishing a *prima facie* case for a further and more specific investigation than an indictment. But the Prime Minister has not only not taken such follow-up action but the Government and the

majority party in Parliament have sought to avoid elucidation of the issues.

The first full-fledged and judicial enquiry into corruption charges after Independence was by Mr. M. C. Chagla who investigated the business transactions of Mr. Haridas Mundhra. The probe was technically into the "affairs" of the Life Insurance Corporation but, taking advantage of an omnibus clause—"any other circumstance which to the Commission may appear to be relevant"—Mr. Chagla probed the Mundhra episode to its depths.

According to Michael Brecher, author of Nehru's political biography, the late T. T. Krishnamachari and some other "of his colleagues hoped to hush up the affair with a proforma inquiry" but "Feroze Gandhi pressed his case relentlessly and succeeded in persuading the Prime Minister that he had abundant evidence of mal-administration, and possibly corruption." Even then Nehru had not apparently bargained for the kind of public inquiry which Mr. Chagla conducted because he expressed unhappiness about it.

Even more revealing was the late T. T. Krishnamachari's reaction. What had been established as a misuse of Governmental power for party and other interests became in his hands a conflict between the public and private sectors. In his now famous statement about "the man-eater being at large" which he made in Lok Sabha on February 18, 1959, Krishnamachari tried to present the entire Mundhra episode as an effort by an aggrieved and "powerful sector" to get even with the Government and also "to make the Government eat the humble pie and renounce its policies."

The next major inquiry into corruption charges was in 1963 when Mr. Justice S. K. Das, a sitting judge of the Supreme Court, was asked to go into the charges against Mr. K. D. Malaviya in respect of the grant of certain mining leases to Serajuddin & Co. In the words of the then Prime Minister, it was not "a full inquiry" but a "quasi-judicial one because there was a Supreme Court judge in it." Though Nehru had then said that "at the Chief Justice's request" he had decided

that "the inquiry was only meant to help me in coming to a decision about this matter and that in the nature of things the inquiry would be secret and confidential" the circumstances in which Mr. Justice S. K. Das was entrusted with the task in an almost impromptu manner gave a different impression.

Malaviya Case

It appears that on May 6, 1963, the Prime Minister telephoned the then Chief Justice, Mr. Justice B. P. Sinha, that he had to consult the latter on an urgent matter which figured in the Lok Sabha during the day. When Mr. Justice Sinha offered to go over to the Prime Minister's residence, Nehru reportedly said that it might give rise to speculation in the Press if the visit came to be known and, instead, offered to take a stroll towards the Chief Justice's residence which was only walking distance.

When they met Nehru was believed to have requested Mr. Justice Sinha to suggest a Supreme Court judge who would hold an *in camera* inquiry into the Serajuddin affair as far as it pertained to Mr. Malaviya and report to him. Mr. Sinha was given just twelve hours to choose the judge and obtain his consent for the manner in which Mr. Nehru wanted the investigation to be conducted. Later, on August 17, accepting Mr. Malaviya's resignation as Minister of Mines and Fuel, the Prime Minister described the Das Commission conclusions as only "prima facie" in which the Government should have taken whatever follow-up action was felt necessary.

Instead, the matter remained buried and Mr. Malaviya had not only to leave the Government under a cloud but also remain in the wilderness, politically speaking, for ten long years until he rejoined Mrs. Gandhi's Cabinet last year. Even now the facts of the case are unknown to the public.

Another aspect of the Das Commission's work also became controversial. As soon as the decision to entrust Mr. Das with such a sort of inquiry was announced, Mr. M.S. Aney and Mr. Frank Anthony objected in the Lok Sabha, saying that the Constitution did not provide for a "private inquiry" by Supreme Court judge. At a later stage, Nehru

himself admitted that it was a mistake to have done so. Subsequently, Mr. A. D. Muni, an Independent member of the Rajya Sabha, brought forward a Bill to amend the Constitution to rule out such inquiries. In the course of the debate on Mr. Muni's abortive move, Government spokesmen declared that the Constitution had already barred such investigations without the special sanction of the President !

The enquiry by Mr. Justice N. Rajagopala Ayyangar, a retired judge of the Supreme Court and the present Chairman of the Press Council of India, into charges against Bakshi Gulam Mohammed, former Chief Minister of Kashmir, was the first of its kind, a full-fledged judicial investigation. As discussed earlier, the Das Commission was handicapped by having to function as a kind of departmental enquiry. The subsequent probe into alleged malpractices by the late Pratap Singh Kairon was more formal in the sense that it was open. But Mr. Sudhir Ranjan Das, a former Chief Justice, who went into the matter had to confine himself to the charges levelled against Kairon and rebutted by him, while Kairon continued to be the Chief Minister of Punjab, which naturally came in the way of State officials helping the Commission.

The Bakshi enquiry, on the other hand, was more systematic. The Kashmir Government which replaced the Bakshi regime had already examined the charges preferred against the former Chief Minister. Mr. Ayyangar's job was mainly to scrutinise the investigation and pronounce on its validity. But, as Mr. Ayyangar pointed out in his report, if the Kashmir Government had confined itself to more serious, and therefore fewer, charges the investigation would have gained in depth.

The enquiry also suffered from another handicap which, unfortunately, is becoming endemic to public men charged with misdemeanour. Bakshi and his relations who were the respondents adopted openly dilatory tactics, first seeking the invalidation of Commission's proceedings before the Jammu and Kashmir High Court (which, surprisingly, ruled that the enquiry into charges of corruption was not in the public

interest !) then appearing sometimes before the Commission with requests for adjournment and keeping away from it altogether on other occasions.

Ultimately, Mr. Ayyangar had to base his conclusions on unimpeachable official documents which needed no corroboration and abandon oral examination of witnesses. Equally unfortunately for standards of rectitude in public life, when the Commission upheld against Bakshi and his relations the basic charge of misappropriation of official position to amass wealth, Bakshi issued a rejoinder that the decision was ex-parte and that he had not been given a "proper" hearing. Worse still; soon after the event when Bakshi came to Delhi from Jammu, Mr. Morarji Desai headed a group of Congress leaders who extended the former Chief Minister what was described as "a hero's welcome."

Proven Transgressors

Mr. Ayyangar was the constrained to observe in the course of his report that it was no use political parties laying down codes of conduct for their leaders and members if they did not honestly enforce them by getting rid of proven transgressors. At least, what Mrs. Gandhi called in a different context "social boycott" should be applied to persons held guilty of corruption by commissions of enquiry.

The Bihar enquiry conducted by Mr. T.L. Venkatarama Aiyar, a retired Judge of the Supreme Court, was against six Congress leaders who had held office between 1947 and 1962. The political overtones of the institution of the investigation were obvious because it was set up by the Samyukta Vidhayak Dal Government which replaced the Congress regime in 1967. Even more pointedly, the shortlived minority Government of the Soshit Dal (supported by the undivided Congress party) which succeeded the SVD Government returned the compliment by instituting a similar probe against some of the SVD Ministers. Though the second enquiry proved a damp squib with the commission terming the charges technical, even leaders of unblemished public record like Mr. Karpuri Thakur and Mr. Ramnandan Tiwari are still described by

some of their critics as one-time respondents in an enquiry into corruption charges.

Another unhealthy trait brought to light during the Bihar enquiry was the tendency of the official-dom to make common cause with politicians in the game of trading corruption charges. The SVD Government having fallen while the Aiyar Commission's work was still in progress; the attitude of the administration in Patna to the investigation underwent a change. This had even hindered the work of the Commission. The same was the case, to a greater extent, in the Bakshi enquiry with the officials going out of their way to side with the successor Government against Bakshi (whom some of them had similarly served earlier) and trying to shield the new incumbents.

Striking parallels

Mention was made earlier of the failure of the Union Government to respond to a demand by a number of legislators for a judicial enquiry into charges against Mr. Bansilal. There is a parallel to this in the Kairon case. When the then Prime Minister refused to entertain their pleas for a probe into charges against the late Kairon, the representatives—including legislators—of non-Communist opposition parties in Punjab had presented a memorandum to the President of India in July 1963 listing 20 specific acts of misdemeanour by the Chief Minister. Still Nehru refused to act, on the ground that two Congress Presidents, Mr. U.N. Dhebar in 1958 and Mr. N. Sanjiva Reddy in 1960, had exonerated Kairon. Incidentally, Mr. S.R. Das had described the action of the two Congress Presidents as "exparte inquiries". The then President, Dr. S. Radhakrishnan, advised the Prime Minister to have the charges investigated. Then came the Das Commission.

Similarly, in the Orissa case in 1964 a committee of lawyers set up by the Congress Party gave a clean chit to Biju Patnaik and his associates, charges against whom were the subject matter of a series of investigations and some of which had been upheld. More recently, the former President

of the Congress Party, Dr. S.D. Sharma announced the formation of a high-level party committee to go into corruption charges against Congress ministers and others. But apparently the committee has died of ennui because there is so little to probe in our public life!

In striking contrast, non-Congress chief ministers, notably Mr. E.M.S. Namboodiripad in Kerala (both in 1957 and 1968, though on the latter occasion in response to a mandatory resolution of Assembly)' Mr. R.N. Singh Deo in Orissa (though his attitude to the Mitter Commission findings against him is graceless), and Mr. Karunanidhi in Tamil Nadu, have readily instituted investigations into charges made against their colleagues. In 1968 Mr. Singh Deo wanted the then Union Home Minister, Mr. Y.B. Chavan, to set up a commission to inquire into corruption charges against some Orissa politicians, including his political allies, while in Tamil Nadu a kind of Ombudsman is in operation on a statutory basis. But unfortunately there is not enough data about its constitution and functioning.

Implicit safeguard

This brings us to the vital question of how to deal with charges of corruption levelled against public personalities. The Santhanam Committee, set up in 1962 by the then Home Minister, Lal Bahadur Shastri, had dealt with the problem though it was strictly meant to examine the working of vigilance units in the ministries and departments of the Government of India. It came to the conclusion that "ensuring absolute integrity on the part of ministers at the Centre and in the States is an indispensable condition for the establishment of a tradition of purity in the public services" and for the purpose suggested a code of conduct for ministers, putting them on par with public servants in the matter of acquisition of property, acceptance of gifts and disclosure of assets and liabilities.

Dealing with the trend of politicians trading corruption charges, the Committee suggested a method of shifting reckless charges from genuine ones. It said whenever ten members of Parliament or a State legislature made a written complaint

against the incumbent of a ministerial office—through the respective presiding officers—the charges should be immediately referred to a committee of inquiry. There would be a panel of suitable persons from which the personnel of such committees would be drawn. Since the charges were to be made in writing and that, too, through the concerned presiding officers there was a built-in safeguard against misuse of the practice for narrow party ends.

Most importantly, there should be no quibbling about the existence or otherwise of a *prima facie* case or about the motivation behind them when such charges are made. Once such a procedure is accepted and enforced without any reservations political corruption instead of being a bogey or bugbear will become a manageable phenomenon.

CHAPTER VII

Corruption

The dictionary meaning of the term 'corrupt' from which the word corruption is derived are 'putrid; rotten; infected; morally evil; vicious; willing to take bribes;' etc. The *Social Science Encyclopaedia* identifies corruption with political corruption and defines it as 'the misuse of public power for private power—acts illegal in themselves calculated to benefit the office-holder'. As we look at the above definitions of corruption, it however becomes evident that it is easier to describe what happens when rampant corruption takes place than to define it. It is particularly so in India, today, where the situation is so putrid that it is something to be seen, nay lived through, to be believed. Any effort to arrive at an academic definition of the subject is, therefore, bound to be an idle exercise.

Corruption, political corruption, sets the pace for its other forms. In its malignant stage it corrupts an entire elite, destroys their value system and corrodes with it all the vitals of life, from those whom the elite dominates. The situation in India today is just as good. It has already become so depraved that the act of survival itself is now, for many, a matter of chance. The year 1974 which comes to an end with the publication of this volume thus presents a high water mark in this direction. It is in this year that we have seen the manifestation of the malaise in its crudest form and, luckily, also a most determined onslaught against it.

There was a time when corruption in India was only indulged in by a coterie and led to general impoverishment of a great many people but did not touch all. Neither was it practised by all. There was still room, then, for objective

By Professor Sugata Dasgupta.

onlookers, personally not affected by the crisis, to discuss the subject dispassionately. But today the situation is different. The practice is widespread and everyone, including the middle classes, both upper and lower, are affected by it. The soaring prices, (despite a small deficit in food production which even a juvenile but non corrupt planner could have wiped out) adulteration, black marketing, the free flow of black money, monopolistic control over jobs and public goods meant for all, to recount only a few, provide the evidence of its perfidious expanse. When a person like Krishna Menon has, on his death bed, to enquire, in humour, or in deadly humour shall I say,—whether the drug about to be administered to him was not adulterated, when the batons of the police hit the tallest of the land merely because he had the temerity to declare a war on corruption, one can no longer sit back and relax.

The time has come now to understand fully the nature of this evil and devise ways and means for fighting it.

Corruption occurs only when there is surplus of wealth or power in a society and a small coterie uses it for its own benefit. The process leads, *ipso facto*, to a corresponding degradation in the position of the masses of people, whose meagre resources are exploited for building a further surplus, meant again to intensify the same process. Earlier, when both, political and economic power were subject to private control and the people were not in the picture, such acts of expropriation would have just been called exploitation. Today, when it is publicly acknowledged in democracies, or in 'near' democracies, that both power and wealth are the concern of the people, the situation is different. For, the process that ultimately leads to exploitation now requires an usurpation of the powers of the people by a coterie, for its own benefit. This act of usurpation by itself adds to the agony of the exploited. The scheme that the elite follows is of course dubious and torturous. Yet, it is simple and is what follows.

The usurpation of power leads to the control of the political apparatus and the later to economic aggrandisement

of a few. The truth of this statement has been well documented today by the various studies on the 'development decade' conducted by several international agencies. The decade was to be devoted to the economic reconstruction of the poor of the third world, but had, shamefacedly, enriched only a few. The development process has, all over the developing world, thus made a few richer and a great many poorer. The former—the beneficiaries of development—however included the elites of the developed countries too. For they have benefited from the process several times more than what the developing nations have done.

This fulfilment of the interests of a few of the third world countries came in the wake of two developments. It was the result, first of all, of a new partnership, leading to a distribution of gains between the elite of the 'developed' countries and those of the third world. Secondly, the latter were helped to consolidate their position through aids received of food, money and arms in a way that the indigenous elite could establish a firm control on the process of political decision-making and could therefore be trusted to keep the 'system' going at the cost of their own poor. It also led to further centralisation, both of power and of wealth, and a systemic intensification of the total process in the new nations.

The scheme however did not work too smoothly. For, the poor of all the nations, the developed included, had already become politically conscious and could obstruct the process. As the cries of democracy and socialism were raised with every sledge hammer of exploitation that fell on the neck of the poor, there were clashes between them and the rich. All these had naturally led in both the worlds, the developing and the developed, to much violence. In the former, however, the intra-societal violence developed into civil wars in which the developed nations quite often participated. But the latter did not themselves fight any battle. They merely exported arms and with it 'wars' to be fought by their allies of the third world.

The wars in the third world had indeed provided 'defences' for the growth of exploitative societies in the last phase of imperialism of the countries of the aid giver. It could succeed, thereby, although to a limited extent, to divert the attention of their dissidents from internal exploitation to external dangers. In the third world, however, those who gained from the process of development had to use a different mechanism for the purpose. It was corruption.

The function that war had performed in the developed nations was, in the third world, given over to corruption. It produced twofold results. First of all, corruption like war acted as the 'multiplier' of exploitation. Secondly, it helped to co-opt a wider elite by the distribution of some portion of the booty once held by a very small coterie as their sole monopoly. The system, a post-war phenomenon, was christened with a new name and called internal colonisation. If the defence of imperialism was provided by the army that had guarded its shores, the internal colonies perpetuated themselves by widespread corruption. As crumbs were thrown to the subsidiary elites and they came to acquire a sham sense of power, the volume and intensity of corruption grew by leaps and bounds.

Corruption, political corruption, leading to the economic exploitation of the masses is thus a peculiar, third world, post-fifty, neo-colonial phenomenon. While the political elite do not directly and openly multiply their income in the new colony, the process gives them by one hand what they publicly give away by the other. In a country in North Asia, where the political elite, the ministers so to say, draw only a small salary but maintain huge, pompous establishments, enquiries revealed that the ministers who did not take any formal payment either in kind or in terms of perquisites, took everything they needed through the back door. Questioned about how they maintained their expensive establishments, the reply was ready; 'they take', said the respondent whom I had asked, 'they simply take whatever they like from all the shops and commercial outfits', much in the same manner as a high dignitary of India was supposed to have done in the

course of her visits to countries abroad and forget, therefore, to make any payments whatsoever.

The new colonial structure thus sustains through corruption and produces many painful results. Three of these are important. One, it leads in the third world to what I choose to call 'dynasty building'. This is done either by inducting the biological heir directly to the political office or by strengthening his economic conditions in order to make him a financial tycoon. In Kenya, Kenyatta's daughter thus becomes the Mayor of Nairobi. In Sri Lanka, the son and son-in-law of the Prime Minister engage in head-long clashes for succession even when the mother remains in power. In Formosa, the son assumes the most important position, only next to the wife. In China, the wife sails easily to power even in the leader's life-time. This dynasty-building is a third world peculiarity. It is a neocolonial phenomenon. Stalin, for example, who had all the powers in his hand did not deem it fit to indulge in it. Even a Hitler could not think of the mechanism for the perpetuation of his administration, and had nominated other successors.

Secondly, corruption leads to the usurpation, of the formal political process and more so in a democracy. This is done through several calculated moves. First of all, the process destroys the sanctity of the political system and builds new sanctions for office. The recruitment to 'elective' posts are done much in the same manner by which the salaried employees are recruited. It leads to interchangeability of roles and positions between the elected and the political bureaucracy, not of the government but of its head.

Its next target is the party. The process assails the sanctity of party posts and reduces important political offices, to that of, what Jayaprakash Narayan calls 'court jesters'. All in all, the purpose is to subvert the political machinery, to rob it of its legitimacy and accountability and to convert it ultimately into a tool in the hands of the 'de facto' ruler. Even parliaments, courts, public media and other agencies are, in such circumstances, reduced, to subsidiary positions and are made to play second fiddle, not to any other institution but to

a person. The way, the route through which the usurper proceeds, is, however, not naked or evident. It is decked on the other hand with slogans, arches and words that echo the most sacred sentiments of the exploited.

Thirdly, it leads to a social invasion of politics and carries corruption straight into the heart of the society. It does so by buying up the elite at all levels, from the city to the village, and by establishing a thin line of contact, one that promises some type of co-sharing of power and wealth to all. It is possible here to make a distinction between real ruler elite and others that are bought over by them. For, the further down the line one goes and the further removed is the co-sharer so called from the ruler elite, the more the gains become illusory; and vice versa. Functions of social invasion are, therefore, elite formation, system maintenance, and the alienation of all elites from the masses; it also leads to the ultimate sacrifice of the 'lesser' elite at the altar of the real ruler elite.

The corruptive process has a multi-image. Its manifestations are of various types. In India, the Prime Minister herself has been accused of granting industrial licences to her own son and of creating a situation where even her name is enough to open up banks and to offer millions to any imposter. Politically, it makes ministry making the pastime of the leader. More than half a dozen ministries are thus installed in the course of two years after an election in a State, until the leader is satisfied of at last getting a Chief Minister who will pay the MLAs but rule through ordinances.

Finally, the elections are reduced to referendums and the election field into a stock market or a boxer's ring, where votes are either bought and sold or are arranged by the strong man. In either case, what one requires in such elections is not political influence but money. As the latter is to come from money bags, the political decision-makers find it infinitely more helpful to team with them, rather than with any ideologue! The process is further strengthened by an integration of the bureaucracy with the two and the new team is thus built, the team that rules India today.

At the village level, too, the same scene is enacted. While a few people get bountiful crops by monopolising State resources meant for all, others starve their way to the grave. For, the big farmers gain more by hoarding their produce than by parting with it. The latter, fattened with surpluses, become quite often the moneylenders too and raise the rates of interest day by day. In sharp contrast to it, all that the poor man has is only a hut, which too often is demolished by the powerful and the land is grabbed. It is then 'developed' at the cost of the State and sold to the bureaucracy at nominal rates who thereafter makes it over to select economic tycoons of the country, in lieu of cash and kind. This is what is happening both in Nairobi and in Delhi.

A hell on earth is then let loose and, as the ruling elite consolidates its position, life for the general mass of the people becomes, as Hobbs said nasty, brutish and short. Such tides of corruption may however rise further, and reach the 'nose' of the exploited elite. The bulk of the intellectuals, middle range bureaucracy, workers and peasants, thrown in back waters, could then rise with it. Rebellions may take place at the time, and a people, suddenly awakened with a rude shock at having been cheated for so long, may even take to arms.

But, can such rebellions succeed any more? No, they are easily crushed, not only because the rot has gone too far, but because corruption is a global phenomenon and, while attacked, will be defended by the might of the global elite; and the latter can mobilize more arms than a rebel can. This is, exactly, what happened in Ceylon when a group of disaffected young intellectuals, dubbed as 'Naxals' had risen in armed revolt against a particular Prime Minister and armies from three continents were rushed to protect her.

It is time now that we clinched the issue and diagnosed the basic causes of the all-pervading malady. The 'third world', corruption is mainly due to two different reasons. They are however inter-connected. The first of these is provided by a false ideal or the mirage of an unrealisable

standard of living and by a craze to reach a consumer oriented society towards which the mirage beckons. The resources available to the 'third world' cannot, simply, ever provide such a standard of living to all; and even a fool knows it.

If the goal is still pursued, the alternatives are clear. The first is to ensure that all the people of a country will just conquer poverty and no longer be miserable, that nobody not even a single family, will be allowed to attain the 'standard' longed for, and the other is that only a few will have access to the new standard of living at the cost of the rest. The latter will, in the eventuality, remain miserable forever and corruption will continue to be a chronic feature of the society that will opt for the alternative.

After a while, corruption in such a society will, however, no longer be considered a pathological phenomenon. Emboldened by success, the elite will transform the informal, pathological process into a formal system. The keepers of the State will then bring new laws, ordinances and enactments; as is the case in India today. The new book of law will legitimise all political aberrations and totally transform the existing structure into a new one.

The process that ensures the maintenance of such a society will have, inevitably, to depend—and this is the other cause of the malady—on centralisation of political apparatuses. As the process crystalises, and the standard of living of a few shoot up, political centralisation will gradually lead to usurpation of all power by a closed circle. The circle will gradually shrink in size; as the monopolists' standard of life rises higher and higher. For, one will feed the other. The 'ideal' will strengthen the agents of centralisation, and the latter upholding the 'ideal' will shove it before a bewildered people; 'this is the cherished dream' they will be told 'which will one day percolate down and give, all, the same standard of living as a few corrupt men enjoy today'.

If these are the two basic causes of the malaise, the remedy is not far to seek. What will be required to rectify

the situation are the opposites of what we have today. A new ideal that does not denigrate poverty and a polity that permits no centralisation, provide the answer. It is clear, however, that none of these aims can be realised by a mere academic discussion of the theme by an idle coterie of the elite. Neither can it be done by violence and force, nor by simplistic devices for 'system change' by the manoeuvre of a few. Drastic and radical changes which can bring in the new, clean society will, on the other hand, require a mass upsurge. People's intervention and non-violent mass action will therefore be needed not only for a change of system but for the establishment of the great new ideal. A cultural revolution that will bring down the elite from their high pedestal to the low ground where the poor live can thus alone meet the purpose. A set of values which suits the new ideal shall be the sheet anchor of the new pattern.

The role of the 'mass' in bringing in such crucial changes is clear as ever. For, the wheel has to move in the reverse direction. The process that had once led to the erosion of legitimacy, to dynasty building, and to the usurpation of the power of the people by a coterie or two, will have to be reversed by the people with their own hands. No such movement can retain its mass base and reject a 'coterie' rule unless it draws its strength and sustenance from the fire and force of non-violence. There is no doubt, thereafter, that the new force generated by the will of the people can win any battle, however formidable the enemy may be.

The students' movement in Pakistan that forced a military dictator to quit, the mass upsurge in East Pakistan that led to the establishment of a new nation and the youth upsurge in Thailand that forced the oligarchy to give way provide the proof, if proof is needed, that where the rebels of Sri Lanka had failed the masses of people could succeed. But the way is not certainly decked with flowers. The sacrifice which a non-violent mass movement demands, the blood which it requires the *satyagrahi* to shed, is no less in quantum than that of any bloody battle.

The boy that was thrown on his back near the Gandhi Maidan at Patna—had epitomised the need for this sacrifice.

The police had put their boots on his breast and had pressed and pressed hard till blood gushed out of his mouth. The leader epitomising, in turn, the masses in revolt had naturally bent before him. He had bent his heart too as they did at wounded knee, and took the blows of the police on his own shoulder. But enough is not enough in this battle. The tentacles of the devil will need many a heart to bend and many a head to be broken by the defendants of the old system, putrid, rotten and evil, that is called corruption in India today.

CHAPTER VIII

Report of an Indian Ombudsman

The report of the Lokayukta of Maharashtra presented to the State Assembly on December 16, 1974 is of more than ordinary interest. It reveals, at once, the usefulness and the limitations of the institution as well as the attitude of the State Government and the Government of India to the problems the new office was meant to tackle. The Lokayukta's report contains a devastating exposure of the limitations of the statute establishing his office. That should be of great interest to Parliament since the Maharashtra Lokayukta and Upa-Lokayukta's Act, 1971 is modelled entirely on the Central Lokpal and Lokayuktas Bill, which was introduced in the Lok Sabha on May 9, 1968. The Bill is yet to be passed by Parliament. This alone suffices to prove the Centre's indifference to the measure.

S. 12(6) of the Maharashtra Act casts on the Lokayukta and the Upa-Lokayuktas a duty to present annually a consolidated report on the performance of their functions to the Governor. The Lokayukta, Mr. S. P. Kotwal, a former Chief Justice of the Bombay High Court, was appointed on October 25, 1972 and the Upa-Lokayukta, Mr. L. M. Nadkarni, only on October 1, 1973. Their annual report, presented on November 17, 1973, is therefore, mainly the Lokayukta's report.

The Act specifically requires S. 12(7) the Governor to lay a copy of the report before the legislature together with an explanatory memorandum. It took the Maharashtra Government 13 months to comply with this mandatory provision. The reasons for this become evident from the report.

It brings out both the stultifying exceptions with which the Act abounds as well as the Government's indifference to his office.

Of the 594 complaints disposed of, as many as 266 were rejected because under the Act the Lokayukta had no jurisdiction to deal with them. The report comments, "Both the Lokayukta and the Upa-Lokayukta feel that, of the complaints disposed of on the ground of want of jurisdiction, quite a substantial portion were complaints where they felt, *prima facie*, that there was substance in the complainant's complaint and that if they had the jurisdiction they would have proceeded further to investigate the matter. It is to be regretted that in several cases notwithstanding that a complaint had merit or justice on its side, the Lokayukta or Upa-Lokayukta have had to refuse to investigate because of technical grounds such as want of jurisdiction under Section 8 (1) (a), or because another remedy is theoretically open to the complainant, Section 8 (1) (b) without going into the merits of the case." There were as many as 45 of such cases.

The Third Schedule of the Act lists matters of serious consequence which according to S. 8(1) (a) the Lokayukta shall not investigate. The very first of them is "action taken for the purpose of investigating crime". Coupled with this is the exception, "action taken in the exercise of powers in relation to determining whether a matter shall go to a court or not". The Act defines "action" as including "failure to act". The implications of the exceptions become depressingly clear.

The report cites a typical instance to illustrate the net result. "If a complainant files a complaint at a police station regarding an offence which discloses, *prima facie*, that an offence has been committed, but the officer-in-charge of the police station after recording this complaint does absolutely nothing for a year or more and the complainant comes to the Lokayukta and complains that no one is taking any cognizance of this complaint, the Lokayukta cannot investigate the complaint because it is action taken (which it must be

remembered includes 'inaction') for the purpose of investigating crime. Even after recording the statements of witness from which it would appear that a prima facie case exists for prosecution, if the police officer does not prosecute, the Lokayukta can do nothing because it is 'action taken in the exercise of powers in relation to determining whether a matter shall go to a court or not'. Between these two clauses it is difficult to see in what case the Lokayukta can proceed to investigate any complaint against police officers. We have already given ... the number of complaints filed and it shows that the largest number of complaints received were against police officers."

The Third Schedule also excludes from the Lokayukta's jurisdiction action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers and suppliers. "This will exclude from the jurisdiction of the Lokayukta and the Upa-Lokayukta the scrutiny of the implementation of all contracts of the public works department, of the excise department, all leases and licences e.g. contracts for building, grant of licences for liquor shops, the exploitation of forest produce or contracts for removal of lac of tendu leaves etc. The exception contemplated in the clause does not materially affect the above limitation. The exception is 'except where the complainant alleges harassment of gross delay in meeting contractual obligation.'"

But much of the rot begins with the formation of the contract, the deal proper. That is entirely kept out. The Lokayukta and Upa-Lokayukta have no separate investigating agency of their own for conducting investigations under the Act but it empowers them, for the purpose of conducting investigations to "utilise the service of any officer or investigation agency of the State or Central Government with the concurrence of that Government; or any other person or agency."

In accordance with this provision, in cases where the Lokayukta considers that a preliminary inquiry has to be made, "particularly in the case where a complaint is filed

against a Minister, he has requested the Anti-Corruption Bureau of the State Government to investigate the report to him. But the experience of the Lokayukta in this respect has not been happy. In important cases especially against a Minister, investigation has either not been made or is inordinately delayed."

The report cites a specific case of a complaint against a Minister which was received on November 17, 1972 and a copy of which "was personally handed over to the Director, Anti-Corruption Bureau by the Lokayukta on November 29, 1972. After three reminders, the latter replied, on September 7, 1973: 'Enquiries in this matter are still incomplete ... final report will be forwarded to you as soon as the enquiries are complete.' Till today the report has not been received and the complaint is pending although nearly one year has elapsed from the date of handing over of the complaint to the Anti-Corruption Bureau."

The Government's Explanatory Memorandum refers to this case and avers that a report has been submitted but does not mention the date, in contrast to its replies to the other four instances of similar inaction the Lokayukta complained of. In all of them the Government Memorandum mentions the dates of the reports eventually submitted.

The Lokayukta requested the Government of India to "permit him occasionally to utilise the services of the CBI Cell at Bombay but that Government declined on the ground that their officers were already overworked."

All this is in addition to the limitations the Act imposes on the Lokayukta. His report expresses the emphatic opinion that if they are allowed to remain "at least in their present form, the very useful and laudable objects of the Act will not be achieved".

This is a warning to Parliament which has an identical measure before it, the 1968 Bill. But even as the Maharashtra Act emulated the Bill and discovered its shortcomings, both the Centre and Maharashtra might usefully draw on the

Rajasthan Lokayukta and Upa-Lokayuktas Act, 1973 to which the Lokayukta's report draws pointed attention. It omits the whole of Schedule III embodying matters exempted from the Lokayukta's purview, does away with the distinction between a "grievance" suffered by a citizen personally and an "allegation" of misconduct made against a public servant. The Maharashtra Act and the Central Bill make elaborate provisions for dealing with them in different ways. Nor does the Rajasthan Act exempt employees of State Corporations, government-owned companies, State controlled societies, or such local authorities as the Government might choose to notify. It is a substantial improvement. One can only hope that both the Central Bill and the Maharashtra Act will be amended on the lines of the Rajasthan statute.

Despite the handicaps, the institution has shown great promise. The report mentions the great public interest in the Lokayukta's functions but he found that "in a substantial number of complaints from the mofussil, especially the rural areas, the Lokayukta found that the complaint lost heart or became distinterested or abandoned proceedings as soon as a reply was sent from our office asking him either to file an affidavit in support of his complaint, or to come to Bombay so that his statement could be recorded.... To meet this difficulty, the Lokayukta and Upa-Lokayukta propose to go out more often at least to district headquarters as soon as several complaints from that district are collected and dispose of them there."

The Tanzanian Ombudsman, Mr. Justice M. P. K. Kimicha, known as the Permanent Commission of Enquiry, tours villages to receive complaints and has been able to arouse the interest and win the confidence of people in the rural areas. It can be emulated here with equal success if only the principle of accountability to the people is whole-heartedly accepted. In the final analysis, the success of an ombudsman depends on the cooperation of the administration and the people's awareness of their rights.

APPENDIX I

Supreme Court on Elections

The controversy in this appeal relates to the validity of election to the Lok Sabha from the Sadar Parliamentary Constituency in the Union Territory of Delhi. Eleven candidates originally offered themselves for election from this constituency but out of them, six withdraw their candidature with the result that only five remained in the field as contesting candidates. They were the petitioner and respondents Nos. 1 to 4. The petitioner was put up as a candidate by the Jan Sangh, while the candidature of the first respondent was sponsored by the Congress, which at that time, on account of the split in the organisation, was known as the ruling Congress or the new Congress. Respondents Nos. 2 to 4 were independent candidates. Though there were nominally five candidates, the real contest was between the petitioner and the first respondent. The polling took place on 5th March, 1971 and the result of the poll was declared on 11th March, 1971. The petitioner secured 55305 votes, while the first respondent polled 98108 votes. The first respondent thus won by a large majority and was declared elected. The petitioner thereupon filed an election petition challenging the validity of the election of the first respondent on various grounds. The election petition was contested by the first respondent and, as the voluminous mass of record shows, it was fought out to a bitter end with great industry and thoroughness on both sides. Mr. Justice Andley of the Delhi High Court, who heard the election petition, found in an elaborate judgement that none of the grounds on which the election was sought to be invalidated was established

Being the Judgment of the Supreme Court of India civil appellate jurisdiction civil appeal No. 1949 of 1972 in the case Sri Kanwarial Gupta vs. Amar Nath Chawla & Ors.

and he accordingly dismissed the election petition with costs. The present appeal preferred by the petitioner impugne this judgement of Mr. Justice Andley.

The election petition was based on numerous grounds which were summarised in paragraph 9 and subsequently elaborated in paragraphs 12,14,18 to 21 and 24 to 26. The ground set out in paragraph 12 was that the electoral rolls, on the basis of which the election had been held, were imperfect and defective, and that vitiated the election. Paragraph 14 alleged the invalidity of the amendment in rule 56 of the Conduct of Election Rules 1961 and paragraphs 18 and 19 challenged the validity of the election on the ground that about a lac or more ballot papers, which had been chemically treated, were fraudulently introduced and that had materially affected the result of the election. The charge in paragraphs 20 and 21 was that the first respondent was guilty of corrupt practice, in that the first respondent, his election agent and other persons with his consent, including the first respondent, had printed and published a hand bill and poster containing statements in relation to the personal character or conduct of the petitioner which were false and which the first respondent did not believe to be true, and which were reasonably calculated to prejudice the prospects of the petitioner's election. Paragraph 24 also charged a similar corrupt practice on the allegation that these statements were repeated by the first and the fifth respondents in public meetings as also during the course of canvassing. And lastly, it was alleged in paragraphs 25 and 26 that the first respondent had incurred or authorised expenditure in excess of the prescribed limit of Rs. 10,000 in contravention of section 77 of the Representation of the People Act, 1951. These were broadly the grounds on which the election of the first respondent was sought to be declared void by the petitioner.

Though the first, second and fifth respondents filed their respective written statements, the contest was only on behalf of the first and fifth respondents. The second respondent supported the petitioner: his support was however

not of much value since he did not take any active part in the petition, Respondents 3 and 4 were obviously not interested in the petition and they did not even care to appear or file any written statement. The first and fifth respondents raised in their written statements certain preliminary objections and also denied the various allegations made in the petition and contested the grounds on which the petitioner claimed to set aside the election of the first respondent. We shall deal with the contents of these written statements a little later when we examine the specific charges levelled against the first respondent. Suffice it to state for the present that on the basis of the preliminary objections raised in the written statements, the learned Trial Judge framed four preliminary issues and they were decided by an order dated 6th August, 1971. So far as the first preliminary issue is concerned, the learned Trial Judge held that paragraph 9, 12, 18 to 21 and 24 to 26 did not suffer from lack of concise statement of material facts, but they did not give full particulars of the allegations and he accordingly directed the petitioner to furnish further particulars with respect to paragraphs 18 to 21, 24 and 25 as specified in the schedule to the order. The second and the fourth preliminary issues do not survive for consideration: they were decided against the petitioner and the petitioner does not challenge the decision in appeal. The third preliminary issue was decided in favour of the petitioner but it is now meaningless to discuss it because the petitioner is not pressing the ground set out in paragraphs 18 and 19 in support of the appeal.

Pursuant to the aforesaid order dated 6th August, 1971 the petitioner furnished particulars of the allegations contained in paragraphs 18 to 21, 24 and 25 by an affidavit dated 19th August, 1971. A reply to these particulars was given by the first respondent on 26th August, 1971. We shall have occasion to refer to these particulars and the reply made to them when we examine the arguments advanced on behalf of the parties.

The learned Trial Judge then framed issues on the merits by an order dated 3rd September, 1971. Issues 1 to 7

of these issues relate to the ground set out in paragraphs 18 and 19. It is not necessary to refer to them since they were decided against the petitioner by the learned Trial Judge and the correctness of this decision is not assailed on behalf of the petitioner in the present appeal. Issue 8 raised the question whether the first respondent, his election agent and other persons with the consent of the first respondent or his election agent committed the corrupt practices charged in paragraphs 20 and 21 and Issue 9 raised a similar question in regard to the corrupt practices set out in paragraph 24. The question whether the first respondent incurred or authorised expenditure in excess of the prescribed limit of Rs. 10,000 in contravention of section 77 as alleged in paragraph 25, was put in issue in Issue 10. Issues 11, 12 and 13 raised certain subsidiary questions but it appears from the judgement of the learned Trial Judge that they were not pressed by the learned Advocate appearing on behalf of the petitioner before the Trial Court. We need not therefore, spend any time on these issues. The last issue was Issue 14 which was directed against the fifth respondent who was alleged to have committed corrupt practices.

There was enormous oral as well as documentary evidence led on behalf of both sides. This evidence discloses certain curious and unusual features to which we shall advert in course of time, but there can be no doubt that it evidences very careful and thorough preparation of the case on either side. Not an inch of ground appears to have been conceded by one side to the other and every move in this long and bitter contest, from one side or the other, seems to have been well thought out and relentlessly pursued. The learned Trial Judge, on a consideration of the evidence presented before him, came to the conclusion that Issues 8, 9 and 10 were not established by the petitioner and there was also no satisfactory proof in regard to Issue 14 and accordingly, by a judgement dated 19th May, 1972 he rejected the charges of corrupt practice against the first and fifth respondents and dismissed the election petition with costs. The petitioner being aggrieved by the judgement of the learned Trial Judge pre-

ferred the present appeal under section 116 A of the Representation of the People Act, 1951.

The petitioner assailed the correctness of the judgement of the learned Trial Judge only on Issues 8; 9, 10, 14. The judgement, in so far as it related to Issues I to 7 and II to 13 was accepted by the petitioner and it is, therefore, not necessary to refer to the facts in so far as they bear on those issues. We shall confine ourselves only to such of the facts as are relevant to Issues 8, 9, 10 and 14 and instead of setting them out in a narrative form before commencing discussion of the arguments, what we propose to do is to refer to the relevant facts while discussing each particular issue. We shall proceed in the order in which these issues were argued before us.

We first take up Issue 10. The charge against the first respondent under this issue was that he incurred or authorised expenditure in excess of the prescribed limit of Rs. 10,000 in contravention of section 77 and thereby committed the corrupt practice defined in section 123 (6) of the Act. Section 123 sets out various corrupt practices which have the effect of invalidating an election and one of them is the incurring or authorising of expenditure in contravention of section 77 : vide sub-section (6). Sub section (1) of section 77 provides that "every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive", while sub-section (3) says that "the total of the said expenditure shall not exceed such amount as may be prescribed". It was common ground between the parties that the expenditure prescribed for a parliamentary constituency in the Union Territory of Delhi was Rs. 10,000. The first respondent and his election agent were, therefore, prohibited by section 77 from incurring or authorising expenditure in connection with his election exceeding Rs. 10,000 and is the first respondent or his election agent incurred or authorised such expenditure in excess of Rs. 10,000, it would be corrupt practice avoiding

his election under section 123 (6). The question which, therefore, arises for consideration is whether the first respondent or his election agent incurred or authorised expenditure in connection with his election exceeding Rs. 10,000.

Now before we proceed to discuss the evidence hearing on this question, we must clear the ground by pointing out that not only is the incurring of excessive expenditure a corrupt practice, but also the *authorising* of such expenditure, and authorising may be implied as well as express. Where the authorising is express, there is no difficulty in bringing home the charge of corrupt practice against the candidate. But a somewhat difficult question on facts may arise where the charge is sought to be proved against the candidate on the basis that he impliedly authorised excessive expenditure. Whether a particular expenditure was impliedly authorised by the candidate must depend on the facts and circumstances of each case as appearing from the evidence adduced before the Court. This question would arise in a challenging form where expenditure in connection with the election is incurred, not by the candidate, but by the political party which has sponsored him or his friends and supporters. Can the limit on the expenditure be evaded by the candidate by not spending any money of his own but leaving it to the political party or his friend and supporters to spend an amount far in excess of the limit? The object of the provision limiting the expenditure is two fold. In the first place, it should be open to any individual or any political party, howsoever small, to be able to contest an election on a footing of equality with any other individual or political party, howsoever rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength. It can hardly be disputed that the way elections are held in our country, money is bound to play an important part in the successful prosecution of an election campaign. Money supplies "assets for advertising and other forms of political solicitation that increases the candidates exposure to the public". Not only can money buy advertising and canvassing facilities such as hoardings, posters, handbills, brochures etc. and all the other parapher-

nalia of election campaign, but it can also provide the means for quick and speedy communications and movements and sophisticated campaign techniques and is also "a substitute for energy" in that paid workers can be employed where volunteers are found to be insufficient. The availability of large funds does ordinarily tend to increase the number of votes a candidate will receive. If, therefore, one political party or individual has larger resources available to it than another individual or political party, the former would certainly, under the present system of conducting elections, have an advantage over the latter in the electoral process. The former would have significantly greater opportunity for the propagation of its programme while the latter may not be able to make even an effective presentation of its views. The availability of disproportionately larger resources is also likely to lend itself to misuse or abuse for securing to the political party or individual possessed of such resources, undue advantage over other political parties or individuals. Douglas points out in his book called *Ethics in Government* at page 72, "one party ever attains overwhelming superiority in money, newspaper support, and (government) patronage, it will be almost impossible barring an economic collapse, for it ever to be defeated". This produces anti-democratic effects in that a political party or individual backed by the affluent and wealthy would be able to secure a greater representation than a political party or individual who is without any links with affluence or wealth. This would result in serious discrimination between the political party or individual and another on the basis of money power and that in its turn would mean that "some voter are denied an 'equal' voice and some candidates are denied an 'equal chance'." It is elementary that each and every citizen has an inalienable right to full and effective participation in the political process of the legislatures and this requires that each citizen should have equally effective voice in the election of the members of the legislatures. That is the basic requirement of the Constitution. This equal effective voice-equal opportunity of participation in the electoral process—would be denied if affluence and wealth are to tilt the scales in favour of one political party

or individual as against another. The democratic process can function efficiently and effectively for the benefit of the common good and reach out the benefits of self-government to the common man only if it brings about a participatory democracy in which every man, howsoever lowly of humble he may be, should be able to participate on a footing of equality with others. Individuals with grievances, man and woman with ideas and vision, are the sources of any society's power to improve itself. Government by consent means that such individuals must eventually be able to find groups that will work with them and must be able to *make their voices* heard in these groups and no group should be insulated from competition and criticism. It is only by the maintenance of such conditions that democracy can thrive and prosper and this can be ensured only by limiting the expenditure which may be incurred in connection with elections, so that, as far as possible, no one single political party or individual can have unfair advantage over the other by reason of its larger resources and the resources available for being utilised in the electoral process are within reasonable bounds and not unduly disparate and electoral contest becomes evenly matched. Then alone the small man will come into his own and will be able to secure proper representation in our legislative bodies.

The other objective of limiting expenditure is to eliminate, as far as possible, the influence of big money in the electoral process. If there were no limit on expenditure, political parties would go all out for collecting contributions and obviously the largest contributions would be from the rich and affluent who constitute but a fraction of the electorate. The pernicious influence of big money would then play decisive role in controlling the democratic process in the country. This would inevitably lead to the worst form of political corruption and that in its wake is bound to produce other vices at all levels. This danger has been pointed out in telling words in the following passage from the notes in Harvard Law Review. Vol. 66 p. 1260 :

"A less debatable objective of regulating campaign funds is the elimination of dangerous financial pressures

on elected officials. Even if contributions are not motivated by an expected return in political favours, the legislator cannot overlook the effects of his decisions on the sources of the campaign funds."

It is difficult to generalise about the degree of influence which the large contributors may wield in shaping the policies and decisions of the political party which they finance. It is widely acknowledged, however, that, at the very least, they would have easy access to the leaders and representatives of the political party. But it would be naive to suggest that the influence ends with mere access. It may safely be assumed that hardly any politicians "do not consciously sell their votes", the result may be nearly the same, if one accepts Herbert Alexander's analysis of the subtle factors that influence a political party's actions :

"Many politicians—who do what they honestly think is right, never realize that they are more spokesmen for their financial supporters. A legislator can avoid a conflict of interest by investing in government bonds, but he cannot change the conditioning that leads him to believe that what is good for his former company or present backers is good for the country."

It is likely that some elected representatives would tend to share the views of the wealthy supporters of their political party, either because of shared background and associations, increased access or subtle influences which condition their thinking. In such event the result would be that though ostensibly the political parties which receive such contributions may profess an ideology acceptable to the common man, they would in effect and substance be representative of certain economic class and their policies and decisions would be shaped by the interests of that economic class. It was over a hundred years ago that John Stuart Mill observed that persons of a particular class who have exclusive governmental power, even if they try to act objectively, will tend to overlook the interests of other classes, or view those interests differently. And to this natural tendency may be added the

fact that office bearers and elected representatives may quite possibly be inclined, though unconsciously and imperceptibly, to espouse policies and decisions that will attract campaign contributions from affluent individuals and groups. It was said of the electoral process in the United States of America : "Members of the Rockefeller and Du Pont families invest in the election of a Republican President because they sense that if that party takes over the White House, their interests will gain more sympathetic attention" "The central objective of contributions is access to the power of the elected official" "For a gift of a few hundred dollars an individual may gain, in return, the intercession of a Congressman that will get him a government contract or a tariff provision that will ultimately net him or his business tens of thousands of dollars. "It is obvious that pre-election donations would be likely to operate as post election promises resulting ultimately in the casualty of the interest of the common man, not so much ostensibly in the legislative process as in the implementation of laws and administrative or policy decisions. The small man's chance is the essence of Indian democracy and that would be stultified if large contributions from rich and individuals or groups are not divorced from the electoral process. It is for this reason that our Legislators, in their wisdom, enacted a ceiling on the expenditure which may legitimately be incurred in connection with an election. This background must inform the court in the interpretation of this vital and significant provision in the election law of our country.

Now, if a candidate were to be subject to the limitation of the ceiling, but the political party sponsoring him or his friends and supporters were to be free to spend as much as they like in connection with his election, the object of imposing the ceiling would be completely frustrated and the beneficent provision enacted in the interest of purity and genuineness of the democratic process would be wholly emasculated. The mischief sought to be remedied and the evil sought to be suppressed would enter the political arena with redoubled force and vitiate the political life of the country. The great democratic ideal of social, economic and political justice and

equality of status and opportunity enshrined in the Preamble of our Constitution would remain merely a distant dream eluding our grasp. The legislators could never have intended that what the individual candidate cannot do, the political party sponsoring him or his friends and supporters should be free to do. That is why the legislators wisely interdicted not only the incurring but also the authorising of excessive expenditure by a candidate. When the political party sponsoring a candidate incurs expenditure *in connection with his election*, as distinguished from expenditure on *general party propaganda*, and the candidate knowingly takes advantage of it or participates in the programme or activity or fails to disavow the expenditure or consents to it or acquiesces in it, it would be reasonable to infer, save in special circumstances, that he impliedly authorised the political party to incur such expenditure and he cannot escape the rigour of the ceiling by saying that he has not incurred the expenditure, but his political party has done so. A party candidate does not stand apart from his political party and if the political party does not want the candidate to incur the disqualification, it must exercise control over the expenditure which may be incurred by it directly to promote the poll prospects of the candidate. The same proposition must also hold good in case of expenditure incurred by friends and supporters directly in connection with the election of the candidate. This is the only reasonable interpretation of the provision which would carry out its object and intendment and suppress the mischief and advance the remedy by purifying our election process and ridding it of the pernicious and baneful influence of big money. This is in fact what the law in England has achieved. There, every person, on pain of criminal penalty, is required to obtain authority from the candidate before incurring any political expenditure on his behalf. The candidate is given complete discretion in authorising expenditure upto his limit. If expenditure made with the knowledge and approval of the candidate exceeds the limit or if the candidate makes a false report of the expenditure after the election, he is subject not only to criminal penalties, but also to having his election voided. It may be contended that this

would considerably inhibit the electoral campaign of political parties. But we do not think so. In the first place, a political party is free to incur any expenditure it likes *on its general party propaganda* though of course in this area also some limitative ceiling is eminently desirable coupled with filing of return of expenses and an independent machinery to investigate and take action. It is only where expenditure is incurred which can be identified with the election of a given candidate that it would be liable to be added to the expenditure of that candidate as being impliedly authorised by him. Secondly, if there is continuous community involvement in political administration punctuated by activated phases of well discussed choice of candidates by popular participation in the process of nomination, much of unnecessary expenditure which is incurred today could be avoided. Considerable distances may not have to be travelled by candidates and supporters nor hidden skeletons in political cupboards tactically uncovered, propagandist marijuana skilfully administered, temptations of office strategically held out nor violent demonstrations disruptively attempted. The dawn-to-dawn multiple speeches and monster rallies, the flood of posters and leaflets and the organising of transport and other managements for large numbers would become otiose. Large campaign funds would not be able to influence the decision of the electors if the selection and election of candidates become people's decision by discussion and not a Hobson's choice offered by political parties. Limiting election expenses must be part of the political process.

This view, which we are taking, does not run counter to any earlier decisions of this Court. The first decision to which we must refer in this connection is *Ranajava Singh v. Painath Singh & Ors.* (1) There the corrupt practice charged against the elected candidate was that certain persons who were in employment of his father worked for him in connection with the election and their number exceeded the maximum number of persons who could be employed in connection with the election as specified in Sch. VI read with section 77. This charge was negatived by a Bench of five judges of this

Court. The Bench held that in order to attract the inhibition of the relevant sections, it was necessary that the employment of persons other than or in addition to those specified in Sch. VI should be *by* a candidate or his agent and since in that case, the persons who worked in connection with the election were neither employed nor paid by the elected candidate or his agent, the prohibitory requirement of section 77 read with section 123(7) was not breached. It will be seen that this decision was concerned primarily with the question whether servants of the father of the elected candidate, who worked for the elected candidate in connection with the election, were liable to be taken into account in determining whether the maximum number of persons who may be employed for payment in connection with the election were exceeded. It is no doubt true that this Court observed that no expenditure was *incurred* by the elected candidate over and above what was shown in his return of expenses and he could not, therefore, be said to have concealed such expenditure, but that was obviously because these persons who worked in connection with the election were not *paid by him*. This Court had no occasion to consider whether the elected candidate could be said to have *authorised* any expenditure by knowingly taking advantage of the services of these persons, because no such argument was advanced before this Court. In fact such an argument could not plausibly be advanced because the salaries paid by the father to these persons were not for the purpose of working in connection with the election. The salaries were paid because they were servants in the regular employment of the father and it was merely at the request of the father that "they assisted the son in connection with the election which strictly speaking they were not obliged to do". This decision does not, therefore, run contrary to what we have said.

We may then refer to the decision of this Court in *Ram Dayal v. Brijraj Singh & Ors* (2). The question which arose for consideration in that case was whether certain expenditure incurred by the Maharaja of Gwalior and the Rajmata in connection with the election of Brijraj Singh was liable to be included in his election expenses. Sheh, J., (as he then was)

speaking on behalf of a Division Bench of two judges, pointed out that in the absence of any connection between the canvassing activities carried on by the Maharaja and the Rajmata with the candidature of Brijraj Singh, it is impossible to hold that any expenditure was incurred for Brijraj Singh which was liable to be included in his election expenses. The learned Judge then proceeded to add :

“We agree with the High Court that under 77 (1) only the expenditure incurred or authorised by the candidate himself or by his election agent is required to be included in the account or return of election expenses and thus expenses incurred by any other agent or person *without* anything more need not be included in the account or return, as such incurring of expenditure would be purely voluntary.” (Emphasis supplied)

These observations would show that more incurring of expenditure by any other person in connection with the election of a candidate, *without something more*, would not make it an expenditure authorised by the candidate. But if there is some thing more which can reasonably lend itself to the inference of implied authorisation particularly having regard to the object of this provision is to bring about, as far as possible, equality in availability of resources and eliminate the corrupting influence of big money. It is significant to note that in this case the Court proceeded to examine whether the evidence was sufficient to establish that Brijraj Singh travelled with the Maharaja in his helicopter and visited several villages for his election campaign and held that the evidence in this connection was not reliable. This inquiry would have been wholly unnecessary unless the Court was of view that if Brijraj Singh could be shown to have travelled with the Maharaja in his helicopter and visited several villages in connection with his election campaign, that would be sufficient to invest the expenditure incurred by the Maharaja with the character of expenditure impliedly authorised by Brijraj Singh. This decision, therefore, far from contradicting the view taken by us, actually supports it.

We find the same view taken by this Court in the subsequent decision in *Magraj Patodia v. R. K. Birla & Ors.* (3) There also Hegde, J., speaking on behalf of a Division Bench of two judges observed, after referring to the decisions in *Rananjaya Singh v. Baijnath Singh & Ors.* (1) and *Ram Dayal v. Brijraj Singh & Ors.* (2)

“This Court as well as the High Courts have taken the view that the expenses incurred by the political party to advance the prospects of the candidates put up by it, *without more* do not fall within 77.” (emphasis supplied)

The same view was reiterated again by a Division Bench of two judges of this Court in *B. Rajagopala Rao v. N. G. Ranga.* (4) The question, therefore, in cases of this kind always is whether there is something more which may legitimately give rise to an inference of implied authorisation by a candidate. What could be that something more is indicated by us in the proposition formulated above, though we must confess that by its very nature it is not possible to lay down the exhaustive enumeration of the circumstances in which that something more may be inferred.

With these observations in regard to the scope and ambit of the provision limiting expenditure, we may now proceed to examine the facts and see whether the first respondent incurred or authorised expenditure exceeding Rs. 10,000 in connection with his election.

